



Cornell Law School Library

Cornell University Library
KD 1205.G64

The modern law of personal property /



3 1924 022 162 386

law



Cornell University
Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

THE
MODERN LAW
OF
PERSONAL PROPERTY.

THE
MODERN LAW
OF
PERSONAL PROPERTY.

BY
LOUIS ARTHUR GOODEVE, B.A.,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,
AUTHOR OF "THE MODERN LAW OF REAL PROPERTY."

LONDON:
W. MAXWELL & SON, 8, BELL YARD, TEMPLE BAR,
Law Booksellers and Publishers.
MEREDITH, RAY, & LITTLER, MANCHESTER;
HODGES, FIGGIS & CO., AND E. PONSONBY, DUBLIN;
THACKER, SPINK & CO., CALCUTTA;
CHARLES F. MAXWELL, MELBOURNE & SYDNEY.

1887.

LONDON :

BRADBURY, AONEW, & CO., PRINTERS, WHITEFRIARS.

PREFACE.

THE present work is intended to be the complement of the Modern Law of Real Property ; in consequence of the favorable reception accorded to that work the Author has been induced to undertake this one. The same method has been adopted ; in particular, where it has appeared desirable, statutes have been quoted *verbatim*, and in like manner expositions of the law by Judges and Writers are given in their own words. What is common both to realty and to personalty and has been already treated of in the earlier work has not been repeated in this.

The subjects of Bankruptcy and of Bills of Sale have been fully treated ; separate chapters have been devoted to the Bills of Exchange Act, to the Patents, Designs, and Trade Marks Act, and to the laws of Copyright ; in the seventh, eighth, and twelfth Chapters will be found an outline of the law relating to Companies ; the provisions of the Married Women's Property Act, which has effected so many changes, will be found *passim*.

On reference to the Table of Statutes it will be seen that the greater part of the legislation now affecting personalty

has been during the present reign, and of this again the greater part during the last decade.

The Author begs to acknowledge his indebtedness to Mr. T. Geary of the Middle Temple for the carefully prepared Index.

L. A. G.

MIDDLE TEMPLE,
June, 1887.

CONTENTS.

INTRODUCTION.

	PAGE
PERSONAL OR MOVABLE PROPERTY	1
Choses in possession—choses in action	<i>ib.</i>
Contrasted with real or immovable	2
No heir	<i>ib.</i>
Domicile of owner	3
No estate	<i>ib.</i>
Limited or successive interests	<i>ib.</i>
Trusts—powers—settlements	<i>ib.</i>
Perpetuity	5
Ownership	<i>ib.</i>
Joint—in common—in severalty	<i>ib.</i>
Partners	6
Joint chose in action	7
Joint power or trust	<i>ib.</i>

CHAPTER I.

CORPOREAL THINGS—CHoses IN POSSESSION.

NATURE OF	8
I. TRANSFER OF	<i>ib.</i>
<i>a.</i> By delivery	<i>ib.</i>
Title.	<i>ib.</i>
Market overt	<i>ib.</i>
Larceny Act	9
Horses	11
Mercantile Law Amendment Act	12
<i>b.</i> By contract	13
Declaration of Trust	<i>b.</i>

	PAGE
Executory—executed or bargain and sale	13
Statute of Frauds, s. 17	14
Lord Tenterden's Act, s. 7	15
Application of	16
Fixtures—emblemments	<i>ib.</i>
Alternative proofs of contract	18
1. Acceptance and receipt of part	<i>ib.</i>
2. Earnest or part payment	19
3. Note or memorandum in writing	20
Need not be in one document	<i>ib.</i>
Contents	22
Agents—principals	24
Signature	25
Statute of Frauds, s. 4	27
Pleading the statute	28

CHAPTER II.

CHOSES IN POSSESSION (*continued*).

I. EVIDENCE CONTRADICTING, &C., WRITTEN CONTRACTS	29
Mercantile customs	<i>ib.</i>
RIGHTS OF UNPAID VENDOR	31
Stoppage <i>in transitu</i>	32
Documents of title—bills of lading, &c.	33
VENDOR IN DEFAULT	35
Warranty	36
II. PARTIES TO CONTRACTS	<i>ib.</i>
Infants	37
<i>Non compotes mentis</i>	41
Married women	42
Corporations	49
Contracts with two or more jointly	52
III. ILLEGAL CONTRACTS	53
Contracts by way of gaming	56
Tippling Acts	58
Sales on Sunday	59

CHAPTER III.

CHoses IN POSSESSION (*continued*).

	PAGE
I. MORTGAGES	61
Bills of Sale Acts, 1878, 1882	<i>ib.</i>
Bills of Sale Act, 1882	64
Its requirements and effect	<i>ib.</i>
Seizure of goods and sale	67
Form	68
(Bills of sale absolute)	74
Consideration	<i>ib.</i>
Priority	76
Entry of satisfaction	<i>ib.</i>
II. PAWN OR PLEDGE	<i>ib.</i>
Pawnbrokers Act, 1872	78
Factors Acts, 1823 to 1877	79
III. BAILMENT	<i>ib.</i>
Six sorts	80
Goods found	81
Action for conversion or detention	82
IV. LIEN	<i>ib.</i>
Particular—general	83
Solicitor's lien	84

CHAPTER IV.

CHoses IN POSSESSION (*continued*).

SHIPS	85
Merchant Shipping Acts, 1854 to 1883	<i>ib.</i>
Aliens	86
Registration	<i>ib.</i>
Shares	87
Trusts	<i>ib.</i>
Transfer of ship or shares	88
Transmission of shares	<i>ib.</i>
Mortgages	89
Certificates of mortgage or of sale	<i>ib.</i>
Re-registration	<i>ib.</i>
Transfer of registry	90
Charter-party	<i>ib.</i>
Bill of lading	<i>ib.</i>

CHAPTER V.

INCORPOREAL THINGS—CHOSSES IN ACTION.

	PAGE
NATURE OF	92
ALIENATION OF	93
At law	<i>ib.</i>
In equity	94
Choses in equity	<i>ib.</i>
Assignments against public policy	<i>ib.</i>
Pensions	95
Maintenance—champerty	<i>ib.</i>
Subject to equities	96
Future property—equitable assignment	<i>ib.</i>
Notice	97
Married Women's Property Act, 1882	<i>ib.</i>
Distringas	98
Stop order	100
Judicature Act, 1873	<i>ib.</i>
Conveyancing Act, 1881	103

CHAPTER VI.

CHOSSES IN ACTION (*continued*).

BILLS OF EXCHANGE AND PROMISSORY NOTES, NEGOTIABLE	105
I. BILLS OF EXCHANGE	<i>ib.</i>
Bills of Exchange Act, 1882	107
Rules of common law, law merchant, bankruptcy	<i>ib.</i>
Definition of bill of exchange	<i>ib.</i>
Inland or foreign	108
Payee	<i>ib.</i>
What bills are negotiable	109
When payable	110
Days of grace	111
Referee in case of need	<i>ib.</i>
Acceptance	<i>ib.</i>
Delivery	112
Skeleton bill—inchoate instruments	113
Parties	<i>ib.</i>
Infants—corporations	<i>ib.</i>
Signature	115
Estoppel—ratification	<i>ib.</i>
Bankers	116
Per procuration—agents	<i>ib.</i>

	PAGE
Consideration	116
Accommodation	117
Holder in due course	118
Negotiation	119
Indorsement	<i>ib.</i>
Negotiation of overdue or dishonoured bill	120
Rights of holder	121
Presentment for acceptance	<i>ib.</i>
Presentment for payment	122
Notice of dishonour	124
Protest or noting	126
Acceptor	128
Exhibiting and delivering up of bill	<i>ib.</i>
Liabilities of parties	<i>ib.</i>
Damages for dishonor	129
Discharge of bill	130
Alteration	<i>ib.</i>
Acceptance for honor	131
Payment for honor	132
Bills in a set	<i>ib.</i>
Conflict of laws	133
II. CHEQUES	135
Bills of Exchange Act, 1882	<i>ib.</i>
Presentment for payment	<i>ib.</i>
Revocation of banker's authority	136
Crossed cheques	<i>ib.</i>
Bankers	137
III. DIVIDEND WARRANTS	138
Bills of Exchange Act, 1882	<i>ib.</i>
IV. PROMISSORY NOTES	<i>ib.</i>
Bills of Exchange Act, 1882	<i>ib.</i>
Definition	139
Inland or foreign	<i>ib.</i>
Delivery	<i>ib.</i>
Joint note	140
Presentment for payment	<i>ib.</i>
Liability of maker	<i>ib.</i>
Application of provisions as to bills	141
V. I.O.U. 's	<i>ib.</i>

CHAPTER VII.

CHOSES IN ACTION—(continued).

	PAGE
I. DEBENTURES	142
Debenture stock	143
Assignability	144
Registration	147
Bills of Sale Act, 1882	<i>ib.</i>
Companies Act, 1862	<i>ib.</i>
Companies Clauses Consolidation Act, 1845.	148
II. FOREIGN BONDS	<i>ib.</i>
Scrip.	149
III. COUNTY DEBENTURES	<i>ib.</i>
36 & 37 Vict. c. 35	<i>ib.</i>
LAND MORTGAGE DEBENTURES	150
28 & 29 Vict. c. 78	<i>ib.</i>
IV. POLICIES OF LIFE ASSURANCE	<i>ib.</i>
9 Anne, c. 6, s. 57	151
14 Geo. III. c. 48	<i>ib.</i>
30 & 31 Vict. c. 144	152
Married Women's Property Act, 1882	153
V. POLICIES OF MARINE ASSURANCE	155
19 Geo. II. c. 37	<i>ib.</i>
What may be insured	157
Bottomry—respondentia	<i>ib.</i>
Policies, open, valued	<i>ib.</i>
28 Geo. III. c. 56	<i>ib.</i>
Assignment of policy.	158
31 & 32 Vict. c. 86	159
VI. POLICIES OF FIRE ASSURANCE	160
14 Geo. III. c. 78	<i>ib.</i>

CHAPTER VIII.

CHOSES IN ACTION—(continued).

SHARES IN COMPANIES	162
Letters Patent Act, 1837	<i>ib.</i>
Companies Clauses Consolidation Act, 1845	164
Stock	165
Companies Acts, 1862 to 1886	168
Application of Companies Act, 1862	169
Memorandum of Association	170

	PAGE
Liability of members	170
Articles of Association	171
Incorporation of company	172
Shares—transfer	<i>ib.</i>
Leeman's Act, 1867	<i>ib.</i>
Alteration of capital	173
of name	<i>ib.</i>
Payment of capital—calls	<i>ib.</i>
Notice of increase of capital, &c.	175
Share warrants	<i>ib.</i>
Trusts	<i>ib.</i>
Certificate	<i>ib.</i>
Evidence of membership	<i>ib.</i>
Prospectus	<i>ib.</i>
Contracts prior to issue of	<i>ib.</i>
Winding-up	177
By the Court	<i>ib.</i>
Voluntarily	178
Subject to supervision	<i>ib.</i>
Unregistered companies	<i>ib.</i>
County Court	<i>ib.</i>
Building societies	179
Industrial and provident societies	<i>ib.</i>

CHAPTER IX.

CHOSES IN ACTION (*continued*).

I. PATENTS	180
21 Jac. I. c. 3	<i>ib.</i>
46 & 47 Vict. c. 57	181
Who may apply	182
Application—true and first inventor	<i>ib.</i>
Subject-matter	184
Exhibitions	<i>ib.</i>
Provisional specification	185
Comptroller—Examiner—Law officer	186
Complete specification	<i>ib.</i>
Applications in respect of same invention	187
Amendment of specification	188
Opposition to grant	<i>ib.</i>
Grant of patent	189
Protection, provisional	190
By complete specification	<i>ib.</i>
Refusal to grant patent	<i>ib.</i>
Loss or destruction of patent	<i>ib.</i>

	PAGE
Extent and duration of patent	190
Crown and officers of the Crown	191
Foreign vessels	<i>ib.</i>
Compulsory licenses	192
Revocation of patent	<i>ib.</i>
Assignment	193
Registers	<i>ib.</i>
Threats of proceedings by patentee	194
Falsely representing articles to be patented	195
II. DESIGNS	<i>ib.</i>
46 & 47 Vict. c. 57	196
Design, copyright in—proprietor of	<i>ib.</i>
Registration	197
Exhibitions	198
Duration of copyright	<i>ib.</i>
Registers	199
Piracy—false representation	200
III. TRADE MARKS	201
46 & 47 Vict. c. 57	202
Registration	<i>ib.</i>
Assignment	207
Registers	<i>ib.</i>
Sheffield Marks	208
V. INTERNATIONAL AND COLONIAL INVENTIONS, DESIGNS, AND TRADE MARKS	<i>ib.</i>
arrangements for protection of	<i>ib.</i>

CHAPTER X.

CHOSSES IN ACTION (*continued*).

COPYRIGHT	210
Unpublished works	<i>ib.</i>
I. BOOKS	211
8 Anne, c. 19	<i>ib.</i>
15 Geo. III. c. 53	212
5 & 6 Vict. c. 45	<i>ib.</i>
Extent and duration of copyright	213
Representing or performing dramatic pieces or musical compositions	214
3 Wm. IV. c. 15	215
45 & 46 Vict. c. 40	<i>ib.</i>
Registration	<i>ib.</i>
Piracy	216
Personal property	217
Importation prohibited	<i>ib.</i>
39 & 40 Vict. c. 36	<i>ib.</i>

	PAGE
II. LECTURES	217
5 & 6 Wm. IV. c. 65	<i>ib.</i>
III. ENGRAVINGS, ETCHINGS, PRINTS, LITHOGRAPHS	218
8 Geo. II. c. 13	<i>ib.</i>
7 Geo. III. c. 38	<i>ib.</i>
17 Geo. III. c. 57	<i>ib.</i>
15 Vict. c. 12, s. 14.	<i>ib.</i>
Duration and enforcement of copyright	219
IV. SCULPTURE	<i>ib.</i>
54 Geo. III. c. 56	<i>ib.</i>
Registration	220
V. PAINTINGS, DRAWINGS, PHOTOGRAPHS	<i>ib.</i>
25 & 26 Vic. c. 68	<i>ib.</i>
Registration	221
Piracy	<i>ib.</i>
Personal property	222
Assignment	<i>ib.</i>
VI. INTERNATIONAL AND COLONIAL COPYRIGHT	<i>ib.</i>

CHAPTER XI.

ENFORCEMENT OF DEBTS.

I. LIABILITY OF PROPERTY TO DEBTS	224
MODES OF ENFORCING JUDGMENTS AND ORDERS	<i>ib.</i>
Writ of <i>faci facias</i>	225
Writs in aid	226
<i>Venditioni exponas</i>	<i>ib.</i>
<i>Pi. fa. de bonis ecclesiasticis</i>	<i>ib.</i>
<i>Sequestrari facias de bon. eccl.</i>	<i>ib.</i>
Attachment of debts—garnishee order	227
Charging order	228
Equitable execution—receiver	<i>ib.</i>
Writ of sequestration	229
Writ of delivery	<i>ib.</i>
County Courts	<i>ib.</i>
Leave to issue execution in certain cases	230
Death of debtor	231
Priority	<i>ib.</i>
II. GUARANTIES—SURETYSHIP	232
29 Car. II. c. 3, s. 4	<i>ib.</i>
19 & 20 Vict. c. 97, s. 3	233
Liability of surety	234
19 & 20 Vict. c. 97, s. 4	<i>ib.</i>

	PAGE
Discharge	235
Surety—principal—securities	236
Co-sureties	<i>ib.</i>
Indemnity—contribution	<i>ib.</i>
19 & 20 Vict. c. 97, s. 5	237
Representation of solvency, &c.	<i>ib.</i>
9 Geo. IV. c. 14, s. 6	238

CHAPTER XII.

ENFORCEMENT OF DEBTS—(*continued*).

I. BANKRUPTCY, ACTS OF	239
Married women	240
Partners	241
Petition	<i>ib.</i>
Official receiver	<i>ib.</i>
<i>Interim</i> receiver	242
Receiving order	<i>ib.</i>
First meeting of creditors	243
Composition or arrangement	<i>ib.</i>
Adjudication	<i>ib.</i>
Trustee	244
Committee of inspection	<i>ib.</i>
Composition or arrangement	245
Discharge of bankrupt	<i>ib.</i>
Debts provable	246
Priority	247
Partners	<i>ib.</i>
Loans by wife	248
Landlord	249
Proof of debts	<i>ib.</i>
Secured creditors	<i>ib.</i>
Execution creditors	250
Commencement of bankruptcy	251
Property divisible	<i>ib.</i>
In bankrupt's reputed ownership	252
17 & 18 Vict. c. 104, s. 72	255
Voluntary settlements	<i>ib.</i>
13 Eliz. c. 5	257
Fraudulent preference	259
Receiving order against judgment debtor	261
Administration of estate of debtor dying insolvent	<i>ib.</i>
Removal of a trustee become bankrupt	262

	PAGE
II. CORPORATIONS—COMPANIES	262
Dissolution of corporation	263
Winding-up of company	<i>ib.</i>
Petition	<i>ib.</i>
Contributory	264
Married women	265
Rules of bankruptcy	266

CHAPTER XIII.

ENFORCEMENT OF DEBTS (*continued*).

I. INTEREST ON DEBTS	268
At law	<i>ib.</i>
By statute	<i>ib.</i>
3 & 4 Wm. IV. c. 42, ss. 28, 29	<i>ib.</i>
1 & 2 Vict. c. 110, s. 7	270
45 & 46 Vict. c. 61, s. 57 (1)	<i>ib.</i>
Rules of Court	<i>ib.</i>
46 & 47 Vict. c. 52, Sched. II. and s. 40 (5)	<i>ib.</i>
In winding-up	271
II. STATUTES OF LIMITATION	<i>ib.</i>
(a) Simple contract debts	272
21 Jac. I. c. 16, s. 3	<i>ib.</i>
Merchants' accounts	<i>ib.</i>
19 & 20 Vict. c. 97, s. 9	<i>ib.</i>
Law—equity	273
Disabilities	<i>ib.</i>
21 Jac. I. c. 16, s. 7	<i>ib.</i>
19 & 20 Vict. c. 97, s. 10	<i>ib.</i>
45 & 46 Vict. c. 75, ss. 1 (2), 12	274
Married women	<i>ib.</i>
Debtor beyond seas	275
4 Anne, c. 16, s. 19	<i>ib.</i>
19 & 20 Vict. c. 97, s. 12	<i>ib.</i>
Executor or administrator	<i>ib.</i>
Joint debtors	276
19 & 20 Vict. c. 97, s. 11	<i>ib.</i>
Accrual of cause of action	<i>ib.</i>
Ignorance—fraud	<i>ib.</i>
New promise to pay	277
Acknowledgment—part payment	<i>ib.</i>
9 Geo. IV. c. 14, s. 1	<i>ib.</i>
19 & 20 Vict. c. 97, s. 13	278
Appropriation of payments	280
Retainer by executor or administrator	<i>ib.</i>

	PAGE
(b) Specialty debts	281
3 & 4 Wm. IV. c. 42, ss. 3—5	<i>ib.</i>
25 & 26 Vict. c. 89, ss. 16, 75	<i>ib.</i>
Pleading or setting up the statute	<i>ib.</i>
When the statute ceases to run	282
III. ANTE-NUPTIAL DEBTS OF MARRIED WOMEN	<i>ib.</i>

CHAPTER XIV.

DEVOLUTION OF PROPERTY ON DEATH OF OWNER.

I. PERSONAL REPRESENTATIVE	285
Executor—administrator	<i>ib.</i>
<i>Donatio mortis causa</i>	<i>ib.</i>
History of wills of personalty	<i>ib.</i>
Intestacy—administration	286
Statutes of administration	287
13 Edw. I. c. 19	<i>ib.</i>
31 Edw. III. c. 11	288
21 Hen. VIII. c. 5	<i>ib.</i>
Probate court	<i>ib.</i>
20 & 21 Vict. c. 77	<i>ib.</i>
21 & 22 Vict. c. 95	<i>ib.</i>
High Court	<i>ib.</i>
36 & 37 Vict. c. 66	289
38 & 39 Vict. c. 77, s. 18	<i>ib.</i>
Power of executor or administrator, whence derived	<i>ib.</i>
II. DISPOSITION BY WILL	<i>ib.</i>
1 Vict. c. 26	<i>ib.</i>
Married Women's Property Act, 1882	291
III. HUSBAND'S INTEREST IN WIFE'S PROPERTY	292
Paraphernalia	294
Reversionary interests	<i>ib.</i>
20 & 21 Vict. c. 57	<i>ib.</i>
Wife's equity to a settlement	295
Statute of Frauds, s. 25	296
IV. PROBATE OF WILL	<i>ib.</i>
In common form	<i>ib.</i>
In solemn form	<i>ib.</i>
Of will of married woman	297
Where no executor	<i>ib.</i>
Married woman executrix	298
Bankrupt executor	<i>ib.</i>
V. EXECUTORS	<i>ib.</i>
Appointment of	<i>ib.</i>
Indemnity and reimbursement	299
22 & 23 Vict. c. 35, s. 31	<i>ib.</i>

	PAGE
Surviving executors	300
Conveyancing Act, 1881	<i>ib.</i>
Power before probate	301
Executor <i>de son tort</i>	<i>ib.</i>
Renunciation	<i>ib.</i>
What passes to the executor	303
Rights of action	<i>ib.</i>
Payment of debts	304
VI. LEGACIES	305
Legacy to creditor	<i>ib.</i>
Portions to children	<i>ib.</i>
Executor's consent	306
Gift to charity	<i>ib.</i>
General bequest—specific bequest	<i>ib.</i>
Ademption	307
Abatement	308
Demonstrative	<i>ib.</i>
Payment	<i>ib.</i>
Vested—contingent	309
RESIDUE	311
VII. DEVASTATION	<i>ib.</i>
Carrying on business of testator	<i>ib.</i>
Compounding debts, &c., by executor	<i>ib.</i>
VIII. ADMINISTRATORS	312
Vesting of property in	313
Who entitled to administration	314
Grant to creditor	317
Special and limited administrations	318
Administration bond	320
Duties of	322
Statutes of Distribution	<i>ib.</i>
22 & 23 Car. II. c. 10	<i>ib.</i>
1 Jac. II. c. 17	<i>ib.</i>
IX. ADMINISTRATION ACTION	324
County Courts	325
Personal liability of executor or administrator	326
Statute of Frauds, s. 4	<i>ib.</i>
Real Property Limitation Act, 1874	327
Trustees Relief Acts, 1847, 1849	<i>ib.</i>
Advice by Court	328
X. DUTIES	<i>ib.</i>
On affidavit for probate or administration	<i>ib.</i>
On accounts in respect of <i>donationes mortis causæ</i> , &c.	32
Customs and Inland Revenue Act, 1831	<i>b</i>
Legacy Duty Acts	330
Succession Duty Act	332
Bodies corporate	335
Customs and Inland Revenue Act, 1885	<i>ib.</i>
INDEX	337

TABLE OF CASES CITED.

	PAGE		PAGE
ACASON v. Greenwood	45, 284	Bell, <i>In re</i>	270
Adam v. Inhabitants of Bristol	276	— In the Goods of	299
Adam's Policy Trusts, <i>In re</i>	153	Bellamy, <i>In re</i>	293
Adam's Trust, <i>In re</i>	262	Besant v. Wood	55
Agra & Masterman's Bank, <i>In re</i>	96, 144	Bianchi v. Offord	73
Airey v. Bower	290	Bills of Sale Act, <i>In the Matter of</i>	66
Allam, <i>Ex parte</i>	73, 75	Bird, <i>In re</i>	260
"Alpine" Trade Mark, <i>In re</i>	202	Birkmyr v. Darnell	233
Alston v. Trollope	282	Bishop, <i>Ex parte</i>	257
Anderson, <i>Ex parte</i>	242	Blaiberg v. Beckett	71
Andrews, <i>In re</i>	243	— v. Parke	65
Anglo-Swiss Condensed Milk Co. v. Metcalf	208	— v. Parsons	71
Arbenz's Application and Osborne and Co.'s Opposition, <i>In re</i>	202, 204	Blakely Ordnance Co., <i>In re</i>	96, 144, 145
Armstrong, <i>In re</i>	45, 240, 252	Blaksley's Trusts, <i>In re</i>	99
— v. Stokes	25	Blanchett, <i>Ex parte</i>	239
Ashburner v. Macguire	308	Blanckenhagen v. Blundell	109
Ashby v. White	272	Blandy v. Whitmore	305
Ashton v. Blackshaw	63	Bloxam v. Saunders	32
Ashworth v. Munn	6	Bolland, <i>Ex parte</i>	75
Att.-Gen. v. Bouwens	148	— <i>In re</i>	240
Ayres, <i>In the Goods of</i>	298	Bonham, <i>Ex parte</i>	242
BADISCHE Anilin und Soda Fabrik v. Levinstein	184	Bothomley v. Sherson	306, 307, 308
Bahia and San Francisco Rail. Co., <i>In re</i>	145	Boulton's Trusts, <i>In re</i>	328
Bailey v. Sweeting	21	Bowen v. Brecon Rail. Co.	148
Ball, <i>Ex parte</i>	260	Bowes v. Hope Life Insurance Co.	264
Bannatyne v. Direct Spanish Telegraph Co.	173	Bown, <i>In re</i> , O'Halloran v. King	48
Barber, <i>In re</i>	72	Bradford Banking Co. v. Briggs	175
Bardick v. Garrick	270	Bradlaugh v. Newdegate	95
Barker's Trusts, <i>In re</i>	262	Brandon, <i>Ex parte</i>	240
Barne, <i>Ex parte</i>	241	— v. Robinson	259
Barnes v. Toye	38	Bray v. Gardner	188
Barney v. United Telephone Co.	195	Breton v. Mockett	5
Barrow's Case	269	Brice v. Baunister	102
Bateman v. Mid Wales Rail. Co.	113	— v. Stokes	299
Baum, <i>Ex parte</i>	246	Bridger v. Savage	57
Beard v. Webb	42	Brinsmead v. Harrison	82
Belaney v. Ffrench	84	British India Steam Navigation Co. v. Commissioners of Inland Revenue	142
		Broadbent v. Barrow	306
		Brocklehurst v. Railway Printing and Publishing Co.	147
		Brook v. Hook	115

	PAGE		PAGE
Brown v. Gellatly	309	Collins Co. (The) v. Brown	201
Bruce v. Wait	227	Collins v. Blantern	54
Buck v. Robson	102	Colonial Bank v. Whinney	253
Buckley v. Barber	6	Consolidated Credit and Mortgage Corporation v. Gosney	73
Buckmaster v. Buckmaster	40	Coombs v. Brooks	262
Burdick v. Garrick	270	— v. Coombs	282
Burgess v. Eve	234	— v. Dibble	56
Burlinson v. Hall	102	Conelly v. Steer	76
Burnaby v. Equitable Reversionary Interest Society	41	Cooper, <i>Ex parte</i>	261
Bursill v. Tanner	44	— v. Metropolitan Board of Works	207
Butcher v. Stead	261	Cordwell's Estate, <i>In re</i>	280
Butler v. Butler	48	Cork & Youghal Rail. Co., <i>In re</i>	55
— v. Wearing	250	Cotton, <i>Ex parte</i>	68
Buxton v. Rust	22, 25	Coulthart v. Clementson	234
CALEDONIAN Rail. Co. v. Carmichael	268	Couston, <i>In re</i>	253, 254
Calver v. Laxton	305	Cowper v. Smith	234
Campbell, <i>Ex parte</i>	243	Credit Co. v. Pott	75
— <i>In re</i>	54	Cropper v. Smith	188
Cann, <i>In re</i>	76	Crossfield v. Such	7
Capital Fire Insurance Association, <i>In re</i>	84	Crossthwaite, <i>Ex parte</i>	250
Castle Mail Packets Co., <i>Ex parte</i>	246	Croydon Gas Co. v. Dickinson	235
Caton v. Caton	26	Crouch v. Crédit Foncier	105, 113, 144, 145, 148
Cave v. Hastings	20	Cuddee v. Rutter	35
— v. Roberts	316	Cunningham, <i>Ex parte</i>	241
Cavendish v. Geaves	96	Currey, <i>In re</i>	44, 48
Challinor, <i>Ex parte</i>	74, 75	Curtis v. White	113
Chalmers, <i>Ex parte</i>	32	DALBY v. India and London Life Assurance Co.	151, 152, 160
Chancellor, <i>In re</i>	309	Davies v. Rees	72
Chaplin, <i>Ex parte</i>	240, 257	Davis v. Burton	70
Chapman, <i>In re</i>	240	— v. Usher	64, 76
Chappell v. Boosey	216	— v. Williams	313
Charing Cross Advance & Deposit Bank, <i>Ex parte</i>	75	Dearle, <i>Ex parte</i>	239, 241
Chase v. Westmore	83, 84	Decks v. Strutt	324
Cherry v. Heming	23	Delta Syndicate, Ltd., <i>In re</i>	174
Chester v. Chester	311	Dickson's Trust	310
Chienery, <i>Ex parte</i>	239	Direct Spanish Telegraph Co., <i>In re</i>	173
Christian v. Whitaker	49	District Bank of London, <i>Ex parte</i>	249
City Bank, <i>Ex parte</i>	145	Dixon, <i>Ex parte</i>	242
Clark v. Gilbert	81	— v. Bovill	146
— v. Randall	290	— v. Sadler	159
Clay & Tetley, <i>In re</i>	312	Dobell v. Hutchinson	20
Clayton's Case	280	Dollond v. Johnson	231
Cleaver, <i>In re</i>	72, 73	Donaldson v. Beckett	212
Clement v. Cheesman	285	Dowd v. Hawtin	298
Clerke v. Clerke	318	Drake, <i>Ex parte</i>	82
Coburn v. Collins	64	Draycott v. Harrison	46, 274
Coggs v. Bernard	77, 78, 79, 82	Drew v. Nunn	42
Cohen, <i>In re</i>	239		

	PAGE		PAGE
Driffield & East Riding Pure Linseed Cake Co. v. Waterloo Mills Cake & Warehousing Co.	195	Gillespie, <i>In re</i>	247
Duck v. Bates	215	Godfrey, <i>Ex parte</i>	245
Duke of Ancaster v. Mayer	305	Godwin v. Francis	26
Duncombe v. Brighton Club & Nor- folk Hotel Co.	269	Golding, Davis & Co., <i>Ex parte</i>	35
EASTON v. London Joint Stock Bank	148, 149	Goldsmid, <i>In re</i>	260
Eastwood v. Kenyon	232	Goldstrom v. Tallermann.	71, 72
Eberle's Hotel Co. v. Jonas	247	Goodman v. Griffiths	22
Elder v. Pearson	293	Goodwin v. Roberts	148, 149
Emden v. Carte	84	Gorgier v. Mieville	148
Evans, <i>In re</i>	311	Goringe v. Irwell India Rubber, &c., Works	266
Evelyn v. Evelyn	315	Graham v. Lord Londonderry	294
FAITHFULL, <i>In re</i>	239	Graves v. Ashford	219
Feast, <i>Ex parte</i>	239	Great Northern Rail. Co. v. Harri- son	52
Fennell v. Ridler	60	Green v. Humphreys	279
Fergusson v. Fyffe	270	— v. Wynn	235
Firth, <i>Ex parte</i>	76	Gregory v. Hurrill	277
Florence, <i>In re</i>	253	Greer v. Young	84
Flory v. Denny	61	Grey's Settlements, <i>In re</i>	45, 284
Forbes v. Jackson	236	Grimoldby v. Wells	36
Ford, <i>Ex parte</i>	239	Grimwade, <i>Ex parte</i>	239
Franks, <i>Ex parte</i>	42	HALL, <i>Ex parte</i>	102
Freakley v. Fox	306	Hallett v. Hastings	48, 273
Friedlander, <i>In re</i>	240	Halsey v. Brotherhood	194
Fryer, <i>Ex parte</i>	243	Hamilton v. Chaine	75
Fuggle v. Bland	228	Hamlyn v. Betteley	75
Furber v. Cobb	71, 73	Hammond v. Hocking	72
Fusee Vesta Co. v. Bryant & May	188	Hancock v. Bewley	182
GALLAHER v. Ferris	311	Harden Star Hand Grenade Fire Ex- tinguisher Co., <i>In re</i>	202
Galland, <i>In re</i>	84	Hardwicke, <i>In re</i>	64, 72, 74, 78
Gardner v. London, Chatham & Dover Rail. Co.	148	Harding v. Harding	102
Garland, <i>Ex parte</i>	311	Harman v. Reeve	16
Garrard v. Lewis	113	Harrington v. Victoria Graving Dock Co.	54
General Estates Co., <i>In re</i>	145	Harris v. Brisco	95
General Horticultural Co., <i>In re</i>	227	— v. Rothwell	184
General Rolling Stock Co., <i>In re</i>	282	Hart v. Frontino, &c., Mining Co.	145
Genese, <i>In re</i>	249	Harvey, <i>Ex parte</i>	256
Gibson, <i>Ex parte</i>	240	Hastings, <i>In re</i>	48, 239, 241, 273
— v. Holland	21	Hatchard v. Mége	303
— v. Way	48	Hauxwell, <i>Ex parte</i>	64
Gilchrist, <i>Ex parte</i>	45, 240, 252	Haydon v. Williams	279
Gillespie & Roberts, <i>In re</i>	129	Heaton's Trade Mark, <i>In re</i>	203
		Heilbutt v. Hickson	14
		Hemingway, <i>In re</i>	64
		Hetherington v. Groome	71
		Hewer, <i>In re</i>	65
		Hewitt, <i>In re</i>	244

	PAGE		PAGE
Heyworth, <i>Ex parte</i>	242	Jenkyn v. Vaughan	258
Higgins v. Sargent	268	Johnson, <i>Ex parte</i>	75, 240
— v. Senior	24	Johnson v. Gallagher	44
Higgs v. Assam Tea Co. . . .	145	Jones, <i>Ex parte</i>	37
— v. Weaver	244	— <i>In re</i>	305
Higinbotham v. Holme	259	— v. Owens	312
Hill, <i>Ex parte</i>	74, 260	— v. Victoria Graving Dock Co. .	51
— v. S. Staffordshire Rail. Co. .	269	Jordan, <i>In re</i>	252
Hindhaugh v. Blakey	112		
Hoadley v. M'Laine	22, 23	KAHEN, <i>Ex parte</i>	65
Hobson, <i>In re</i>	250	Kearsley v. Cole	235
Hockaday, <i>In re</i>	74, 75	Keeling, <i>In re</i>	239
Holdsworth v. Hunter	133	Kelner v. Baxter	26
Holland, <i>In re</i>	250	Kemp v. Falk	35
Holmes v. Penney	258	Kenworthy v. Schofield	22
Holroyd v. Marshall	67, 96	Kirk v. Gregory	301
Homfray v. Scroope	275	Knill v. Prowse	102
Hooper, <i>Re</i>	328	Knowlman v. Bluett	28
Hope v. Croydon and Norwood Tram- ways Co. . . .	148	Knox v. Gye	272, 273
Hopkins, <i>In re</i>	298	Kruger v. Wilcox	84
— v. Worcester and Birming- ham Canal Proprietors	143	Kurtz v. Spence	194
Horne v. Roquette	135		
Houghton and Hallmark's Trade Mark, <i>In re</i>	204	LACEY, <i>In re</i>	250
Howe v. Earl of Dartmouth . . .	309	Lampet's Case	93
Hubbard, <i>Ex parte</i>	64, 72, 78, 74	Lane, <i>In re</i>	74
Hughes v. Little	72, 75	Latch v. Latch	299
Hunt v. Clifford	226	Law v. London Indisputable Life Policy	151
— v. Fensham	226	Lazarus, <i>In re</i>	245
— v. Wimbledon Local Board . .	50, 51	Leaf, Sons & Co.'s Trade Mark, <i>In re</i>	202
Hussey v. Horne-Payne	20, 22	Lee v. Barnes	71
Hutchinson, <i>In re</i>	250, 260	Leeds Bank v. Walker	141
		Leggott v. Western	228
		Le May v. Welch	197
IDE, <i>Ex parte</i>	239	Lennox, <i>Ex parte</i>	242
Ihlee v. Henshaw	206	Lewis v. Rucker	159
Imperial Gas Light and Coke Co. v. London Gas Light Co. . . .	277	Lickbarrow v. Mason	32, 33
Imperial Land Co. of Marseilles, <i>In</i> <i>re</i>	145	Lindenau v. Desborough	160
Ingle v. M'Cutchan	102	Lindsay v. Cundy	10
Irons v. Smallpiece	8	Linton v. Linton	246
Irvine v. Watson	25	Lintott, <i>Ex parte</i>	281
		Liquidators of Overend, Gurney & Co. v. Liquidators of Oriental Financial Corporation	235
JACOBS v. Latour	83	Liverpool Adelphi Loan Association v. Fairhurst	42
James, <i>In re</i>	240	Lloyd v. Fleming	159
Jarrett v. Hunter	24	— & Sons' Trade Mark, <i>In re</i>	206, 208
Jefferys v. Boosey	210, 211	— v. Tench	323
Jenkinson, <i>In re</i>	252, 253	Lloyds v. Harper	234

	PAGE		PAGE
London and County Banking Co. v. Terry	280	Morritt, <i>In re</i>	68, 73
Lord v. Midland Rail. Co.	81	Morton v. Tibbett	36
Lovering, <i>Ex parte</i>	252	Moss, <i>Ex parte</i>	96, 251
Lewis v. Rumney	282	Moyce v. Newington	11
Lucas v. Harris	95, 255	Mulliner v. Florence	83
Lumley v. Simmons	72, 73	Munday, <i>In re</i>	75
Lyde v. Barnard	238	Murray v. Lord Elibank	295
Lynch v. Dayrell	160	Murrell, <i>In re</i>	252
Lyndon's Trade Mark, <i>In re</i>	204	Myers v. Elliott	71
Lyon v. Morris	71		
		NATAL Investment Co., <i>In re</i>	145
M'KENZIE v. British Linen Co.	115	National Mercantile Bank, <i>Ex parte</i>	75
Mackenzie v. Mackenzie	290	National Provincial Bank v. Harle	102
Mackintosh, <i>In re</i>	242	Neilson v. James	173
Maclean v. Dunn	26	Nelson, <i>Ex parte</i>	74, 75, 230
Maddison v. Alderson	15	New City Constitutional Club Co., <i>In re</i>	266
Maggi, <i>In re</i>	231	Newman, <i>In re</i>	246
Maley, <i>In the Goods of</i>	297	— v. Newman	153
Mander v. Harris	46, 292	Newton's Patents, <i>In re</i>	191
March, <i>In re</i>	46, 292	Nicholl, <i>Ex parte</i>	240
Margary v. Robinson	290	Nichols to Nixey	251
Market Overt, <i>The case of</i>	8	Normal Trade Mark, <i>In re</i>	203, 208
Marseilles Extension Rail. & Land. Co., Smallpage's & Brandon's Cases, <i>In re</i>	135	N. Central Wagon Co. v. Manchester, Sheffield & Lincolnshire Rail. Co.	64
Marshall v. Green	17, 18, 19	N. of England Oil Cake Co. v. Archangel Insurance Co.	153, 159
Mathers v. Green	182	Nottage v. Jackson	220
Matthew, <i>Ex parte</i>	239	Nottingham, <i>Ex parte</i>	249
Matthews v. Baxter	42	Nottingham Hide Co. v. Bottrill	234
Matthiessen v. London & County Bank	138	Nugent v. Smith	81
May, <i>Ex parte</i>	244		
Melville v. Stringer	71	OASTLER, <i>Ex parte</i>	240
Mercer, <i>Ex parte</i>	256, 258	Odessa Tramways Co. v. Mendel	54
Merle v. Wells	234	Official Receiver, <i>Ex parte</i> , <i>In re</i> Morritt	68, 73
Meyerstein v. Barber	77	— v. Tailby	67, 97
Millar v. Taylor	210, 211	O'Halloran v. King	48
Miller v. Race	105	O'Neil v. City & County Finance Co.	68
Mills v. Fowkes	280	Oram, <i>Ex parte</i>	242
Mitchell, <i>In re</i>	241	Ord v. White	96
Mitchell & Co.'s Trade Mark, <i>In re</i>	204	Otto v. Steel	184
M'Lean v. Clydesdale Banking Co.	117	Overend, Gurney & Co., Lintott, <i>Ex parte</i>	281
Molton v. Camroux	41	Ovey, <i>In re</i>	306
Moore, <i>Ex parte</i>	239	Owens, <i>Re</i>	312
— & Robinson's Banking Co., <i>Ex parte</i>	66		
Morant, <i>In the Goods of</i>	302	PALMER'S, J. B., Trade Mark, <i>In re</i>	206
Morgan v. Rowlands	279	Parker, <i>In re</i>	65, 76, 242, 254, 255
Morrice v. Aylmer	165, 166, 167		
Morris, <i>In re</i>	65		

	PAGE		PAGE
Parsons, <i>Ex parte</i>	64, 72, 74	Rhodes, <i>In re</i>	242
Payne, <i>In re</i>	246	Rigby, <i>Re</i>	231
Pearce, <i>Ex parte</i>	71	River Steamer Co., <i>In re</i> Mitchell's	
— <i>In re</i>	250	Claim	279
— <i>v.</i> Brooks	54	Roberts <i>v.</i> Roberts	66
Pearson, <i>In re</i>	258, 259	Robinson <i>v.</i> Mollett	29
— <i>v.</i> Pearson	207	Rogers, <i>Ex parte</i>	243
Peirce <i>v.</i> Corf	27	Rolfe <i>v.</i> Gregory	277
Pellas <i>v.</i> Neptune Marine Insurance		Rollason, <i>In re</i>	78
Co.	159	Rolls <i>v.</i> Miller	252
Perry <i>v.</i> Barnett	173	Rolph, <i>Ex parte</i>	76
Peruvian Rail. Co. <i>v.</i> Thames &		Ross <i>v.</i> Army & Navy Hotel Co.	147
Mersey Mar. Ins. Co.	114	Rossiter <i>v.</i> Miller	24
Phelps <i>v.</i> Upton Snodsbury Highway		Routledge <i>v.</i> Low	214
Board	51	Roux <i>v.</i> Salvador	159
Philips, <i>In re</i>	40	Row <i>v.</i> Dawson	96
Picker <i>v.</i> London & County Banking		Ryall <i>v.</i> Rowles	94, 95, 96, 97, 105,
Co.	149		253
Pickering <i>v.</i> Ilfracombe Rail. Co.	54	Ryder <i>v.</i> Wombwell	38
Pickersgill <i>v.</i> Rodger	290, 291		
Pike <i>v.</i> Fitzgibbon	44	SADLER'S Co. <i>v.</i> Badcock	155, 160
Pinkerton <i>v.</i> Easton	84	Salanian, <i>Ex parte</i>	246
Pinnock <i>v.</i> Bailey	100	Sampson & Wall, <i>In re</i>	40
Player, <i>In re</i>	256	Sanders, <i>In re</i>	239
Plimpton <i>v.</i> Malcolmson	183	Schmitz, <i>Ex parte</i>	239
Price, <i>In re</i>	292	Schotsmans <i>v.</i> Lancashire, &c., Rail.	
— <i>In the Goods of</i>	297	Co.	32
Price's Patent Candle Co., <i>In re</i>	202	Schove <i>v.</i> Schmineké	212
Prince Albert <i>v.</i> Strange	210	Schwerdtfeger, <i>In the Goods of</i>	318
Printing, &c., Co. <i>v.</i> Sampson	55	Scott <i>v.</i> Tyler	310
Prynne, <i>In re</i>	99	Shakespeare, <i>In re</i>	45
Pye, <i>Ex parte</i>	305	Sharman <i>v.</i> Brandt	26
Pyman <i>v.</i> Burt	270	Sheppard <i>v.</i> Duke	327
		Sherry, <i>In re</i>	280
QUEEN <i>v.</i> County Court Judge of		Sibley <i>v.</i> Higgs	72
Essex	270	Sievebright <i>v.</i> Archibald	15
		Simpson <i>v.</i> Gutteridge	299
RAMSAY'S Case	264	Sinclair, <i>In re</i>	240, 257
Ranelagh, E., <i>v.</i> Hayes	236	Smith <i>v.</i> Anderson	4
Rawlings, <i>Ex parte</i>	72, 73	— <i>v.</i> Lucas	41
Reade <i>v.</i> Conquest	211, 212, 216	— <i>v.</i> Sparrow	60
Reeves <i>v.</i> Barlow	64	— <i>v.</i> Tebbitt	41
— <i>v.</i> Capper	61	Société Générale de Paris <i>v.</i> Tram-	
Reed, <i>Ex parte</i>	243	ways Union Co.	175
Reid, <i>Ex parte</i>	247	Sonch <i>v.</i> Strawbridge	28
— <i>v.</i> Reid	46, 292	Soutar's Policy Trust, <i>In re</i>	153
Reuss <i>v.</i> Picksley	25	South of Ireland Colliery Co. <i>v.</i>	
Reynolds <i>v.</i> Doyle	117	Waddle	50
		Spalding <i>v.</i> Ruding	35
		Spencer <i>v.</i> Clarke	153

	PAGE		PAGE
Spindler, <i>In re</i>	76	UNITED Stock Exchange Co.	264
Stafford v. Stafford	292		
Stainton, <i>In the Goods of</i>	316		
Stanford, <i>Ex parte</i>	72	VAN DUZER'S Trade Mark, <i>In re</i>	202
Stannard v. Harrison	218	Vardon's Trusts, <i>In re</i>	41, 48
— v. Lee	218	Vaughan, <i>In re</i>	306
State Fire Insurance Co.; Times Assurance Co.'s Case	271	— v. Thomas	306
Steele v. M'Kinlay	112, 129	Vertue v. East Anglian Rail. Co.	144
Stephens, <i>Ex parte</i>	258, 259	Vilmont v. Bentley	10, 11
Stewart, <i>In the Goods of</i>	318		
Storm v. Stirling	109		
Stubbins, <i>Ex parte</i>	260	WADSWORTH v. Queen of Spain	227
Studds v. Watson	21	Wain v. Warlters	22, 233, 327
Suffell v. Bank of England	130	Waite v. Jones	54
Sully, <i>Ex parte</i>	252	Walker, <i>In re</i>	240
Sutton's Trusts, <i>In re</i>	101	— v. Bradford Old Bank	102, 103
Swift v. Pannell	74	— v. Nussey	20
Swindell v. Bulkeley	276	Wall v. Taylor	215
Symington & Co. v. Footman & Co.	202	Wallace, <i>In re</i>	243
Symmons, <i>Ex parte</i>	252	Wallis, <i>In re</i>	252
		Walter v. Howe	214
		Ward v. Eyre	269
		— v. Turner	285
TANNER v. Smart	277	Ware, <i>In re</i>	82
Taunton v. Morris	295	Warren, <i>Ex parte</i>	250
Taylor, <i>Ex parte</i>	250, 260	Warwick v. Bruce	40
— v. Addyman	82	Waters v. Tompkins	279
— v. Blakelock	105	Watkins, <i>Ex parte</i>	253, 254
— v. Bowers	53	— v. Evans	68, 73
Tennent, <i>In re</i>	239	Watson, <i>In re</i>	242
Thacker v. Hardy	57	Weaver, <i>In re</i>	244
Thomas v. Ketteriche	315	Webb v. Stenton	228
— v. Turner	216	Webber, <i>Ex parte</i>	95, 255
Thompson v. Dominy	146	Webster, <i>Ex parte</i>	65
— v. Gardner	27	— v. British Empire Assurance Co.	268
Thomson v. Davenport	24	Wellcome's Trade Mark, <i>In re</i>	207
Tibbits v. George	96, 251	Wensley, <i>In the Goods of</i>	318
Tollemache, <i>In re</i>	240	West London Commercial Bank v. Kitson	114
Toole v. Young	216	Westhead v. Riley	229
Tooth v. Hallett	96	Whinney, <i>Ex parte</i>	239
Topham v. Morecraft	324	Whitaker, <i>In re</i>	49, 284, 291
Toward, <i>In re</i>	96, 251	White, <i>Ex parte</i>	246
Townley v. Sherborne	299	White Rose Trade Mark, <i>In re</i>	203, 204
Townsend, <i>In re</i>	64, 72, 74	Whittaker, <i>In re</i>	309
Trench, <i>In re</i>	240	Whitting, <i>In re</i>	102
Tuff, <i>In re</i>	249	Wildcr v. Pigott	41
Turner, <i>Re</i>	231	Wildes v. Dudlow	233
Turquand, <i>Ex parte</i>	65, 76, 254, 255	Wilkins v. Sibley	99
— v. Board of Trade	244	Wilkinson, <i>In re</i>	260
Twycross v. Grant	176	— v. Evans	22
Twyne's Case	257, 258		
Tyrie v. Fletcher	159		

	PAGE		PAGE
Williams, <i>Ex parte</i>	230	Wolverhampton Banking Co., <i>Ex</i>	
— <i>In re</i>	71, 313	<i>parte</i>	54
— <i>v. Lee</i>	324	Wood <i>v. Dixie</i>	258
Williams' Estate, <i>In re</i>	231	Woodall, <i>Ex parte</i>	239
Willmott <i>v. London Celluloid Co.</i> 261, 267		Woodland <i>v. Fuller</i>	13
Wilson <i>v. Brett</i>	81	Woolridge <i>v. Boydell</i>	159
— <i>v. Strugnell</i>	53	— <i>v. Norris</i>	236
Wingfield, <i>Ex parte</i>	253	Wraggs' Trade Mark, <i>In re</i>	206, 208
Winterbottom <i>Ex parte</i>	239	Wright <i>v. Wright</i>	94
Wise, <i>In re</i>	256, 258	Wylson <i>v. Dunn</i>	21
Wittman <i>v. Oppenheim</i>	199	Zucco, <i>In re</i>	261

TABLE OF STATUTES CITED.

	PAGE
9 Hen. III. c. 18 (Magna Carta)	286
13 Edw. I. c. 19 (Statute of West. 2nd)	287
25 Edw. I. (Magna Carta)	286
4 Edw. III. c. 7 (Administration)	303
25 Edw. III. c. 5 (Administration)	<i>ib.</i>
31 Edw. III. c. 11 (Administration).	288
21 Hen. VIII. c. 5 (Administration)	316
s. 3	321
s. 8	302
c. 11 (Restitution)	10
32 Hen. VIII. c. 1 (Wills)	285
2 & 3 Ph. & M. c. 7 (Horse : Markets and Fairs)	11
13 Eliz. c. 5 (Fraudulent Conveyance)	257, 259
27 Eliz. c. 4 (Fraudulent Conveyance)	257
29 Eliz. c. 5 (Fraudulent Conveyance)	<i>ib.</i>
31 Eliz. c. 12 (Horse : Markets and Fairs)	11
21 Jac. I. c. 3 (Monopolies)	180, 182, 183
s. 6	180
c. 16 (Limitations)	271, 280
s. 3	272
s. 4	275
s. 7	273
22 & 23 Car. II. c. 10 (Distributions)	2, 292, 296, 314
s. 1	321
ss. 1, 5	322
s. 4	323
29 Car. II. c. 3 (Frauds)	14, 16, 23, 24, 28, 36
s. 4	15, 17, 23, 27, 282, 326
s. 7	13
s. 16	12
s. 17	13, 15, 17, 19, 27
s. 24	292, 296
c. 7. (Sunday Sales)	
s. 1.	59
1 Jac. II. c. 17 (Distributions)	314, 322
s. 7	324
3 & 4 Anne, c. 9 (Bills of Exchange)	105
4 Anne, c. 16 (Limitations)	272
s. 19	275
7 Anne, c. 25 (Perpetuation of Acts)	105
8 Anne, c. 19 (Books—Copyright)	211

	PAGE
9 Anne, c. 6 (Assurance)	
s. 57.	151
11 Geo. I. c. 18 (Wills—London)	286
8 Geo. II. c. 13 (Engravings, &c., Copyright)	218
s. 1	219
9 Geo. II. c. 36 (Charities)	306
17 Geo. II. c. 38 (Crown Debts)	
s. 3	231
19 Geo. II. c. 37 (Marine Assurance)	155
s. 1, 2, 3	156
s. 6	<i>ib.</i>
s. 7	<i>ib.</i>
24 Geo. II. c. 40 (Spirits)	
s. 12	58
7 Geo. III. c. 38 (Engravings, &c.—Copyright)	218
s. 6	219
s. 7	<i>ib.</i>
12 Geo. III. c. 72 (Bills of Exchange)	
s. 37	107
ss. 39—43	<i>ib.</i>
14 Geo. III. c. 48 (Assurance)	151, 160
s. 1	<i>ib.</i>
s. 2	<i>ib.</i>
s. 3	152
c. 78 (Fire Assurance)	160
s. 83	161
15 Geo. III. c. 53 (Books—Copyright)	212
17 Geo. III. c. 57 (Engravings—Copyright)	218, 219
27 Geo. III. c. 38 (Designs)	195
28 Geo. III. c. 56 (Assurance)	157
s. 1	158
29 Geo. III. c. 19 (Designs)	195
34 Geo. III. c. 23 (Designs)	<i>ib.</i>
36 Geo. III. c. 52 (Legacy Duty)	330
s. 8	333
ss. 12—15	330
s. 18	<i>ib.</i> , 333
s. 32	309
38 Geo. III. c. 71 (Sculpture—Copyright)	219
c. 87	320
s. 6	297
39 & 40 Geo. III. c. 36 (Bank of England—Chancery)	100
c. 98 (Accumulations—Thellusson Act)	5
41 Geo. III. c. 107 (Books—Copyright)	212
45 Geo. III. c. 28 (Legacy)	
s. 5	330
54 Geo. III. c. 56 (Sculpture—Copyright)	196, 219
s. 1	219
ss. 3—6	220
c. 156 (Books—Copyright)	212
55 Geo. III. c. 149 (Legacy and Succession)	331
c. 184.	332

	PAGE
55 Geo. III. c. 184, s. 37	302
s. 38	328
ss. 45—49	329
Sched. Part III.	332
4 Geo. IV. c. 83 (Factors)	79
6 Geo. IV. c. 94 (Factors)	79
7 & 8 Geo. IV. c. 29 (Larceny)	
s. 57	10
9 Geo. IV. c. 14 (Contracts)	16, 17, 272
s. 1	277, 278, 279
s. 6	238
s. 7	13, 15, 17, 27
11 Geo. IV. & 1 Wm. IV. c. 40 (Administration)	311
3 Wm. IV. c. 15 (Dramatic and Musical Copyright)	
s. 2	215
s. 3	216
3 & 4 Wm. IV. c. 14 (Savings Bank)	
s. 28	231
c. 27 (Limitation)	327
s. 6	313
s. 40	327
c. 42 (Law Amendment)	
s. 2	304
s. 3	271
ss. 3—5	281
s. 28	268, 270, 271
s. 29	269
c. 74 (Fines and Recoveries)	
s. 77	294
ss. 79, 80	<i>ib.</i>
s. 91	<i>ib.</i>
5 & 6 Wm. IV. c. 65 (Lectures—Copyright)	217
s. 5	218
1 Vict. c. 26 (Wills)	289
s. 1	2
s. 3	289
ss. 7—9	290
ss. 14—25	<i>ib.</i>
s. 24	289
s. 29	290
s. 33	<i>ib.</i> , 291
c. 73 (Companies)	162
ss. 2—5	163
s. 9	<i>ib.</i>
s. 20	<i>ib.</i>
s. 21	164
1 & 2 Vict. c. 110 (Execution Creditor)	
s. 7	270
s. 12	226
ss. 14, 15	228
c. 114 (Bills of Exchange)	
s. 1	107
s. 9	<i>ib.</i>

	PAGE
2 Vict. c. 13 (Designs)	195
c. 17 (Designs)	196
3 & 4 Vict. c. 82 (Judgment Creditor)	
s. 1	228
5 Vict. c. 5 (Distringas)	
ss. 4, 5	99
Sched. I.	<i>ib.</i>
5 & 6 Vict. c. 39 (Factors)	79
s. 1	<i>ib.</i>
c. 45 (Books—Copyright)	212, 218
s. 2.	212, 213
s. 3	213
ss. 6—10	217
s. 11	213, 216
ss. 13—15	<i>ib.</i>
s. 18	214
s. 20	215, 216
ss. 20—22	213
s. 21	215
s. 22	<i>ib.</i>
s. 23	216
s. 24	213, 215, 216
ss. 25, 26	217
s. 26	216
s. 27	212
c. 79 (Administration)	
s. 23	329
c. 97 (Costs)	
s. 2	220
c. 100 (Designs)	196
s. 1	<i>ib.</i>
7 & 8 Vict. c. 12 (International Copyright)	222
c. 110 (Companies)	162, 168
8 Vict. c. 16 (Companies)	164
s. 1	<i>ib.</i>
s. 6	<i>ib.</i>
s. 7	<i>ib.</i>
s. 9	<i>ib.</i>
s. 11	<i>ib.</i>
ss. 14—16	165
ss. 18—20	<i>ib.</i>
s. 22	<i>ib.</i>
s. 45—47	144
ss. 45—49	148
s. 49	144
s. 61—64	165
s. 97	51
8 & 9 Vict. c. 76 (Legacy Duty)	
s. 4	329, 330
c. 91 (Bank of England)	299
c. 109 (Gaming)	
s. 13	56
9 & 10 Vict. c. 93 (Administration)	304

TABLE OF STATUTES CITED.

xxxiii

	PAGE
9 & 10 Vict. c. 95 (County Courts)	
s. 58	325
s. 65	<i>ib.</i>
s. 66	<i>ib.</i>
s. 76	281
ss. 95—97	230
10 & 11 Vict. c. 96 (Trustees)	327
12 & 13 Vict. c. 74 (Trustees)	<i>ib.</i>
13 & 14 Vict. c. 60 (Trustees)	154, 262
c. 61 (County Courts)	
s. 1	325
c. 104 (Sculpture—Copyright)	
ss. 6, 7	220
15 Vict. c. 3 (Intestates' Estates)	317
s. 2	321
c. 12 (Engravings—Copyright)	
s. 14	218, 219
15 & 16 Vict. c. 12 (International Copyright)	222
c. 24 (Wills)	290
16 & 17 Vict. c. 51 (Succession Duty)	
s. 3	334
s. 4	333
s. 5	334
s. 8	329
s. 10	333
s. 11	332
ss. 18—20	333
s. 19	331
ss. 29, 30	334
s. 31	333
s. 32	334
s. 33	333
ss. 39—41	335
c. 59 (Bills of Exchange)	
s. 19	116
17 & 18 Vict. c. 36 (Bills of Sale)	61
c. 104 (Merchant Shipping)	85
s. 18	<i>ib.</i>
s. 19	86, 87
ss. 37—39	87
s. 43	88
ss. 55—57	<i>ib.</i>
ss. 58—60	89
ss. 66, 69	<i>ib.</i>
s. 71	<i>ib.</i>
s. 72	255
ss. 73—87	89
ss. 88—91	90
c. 120 (Merchant Shipping)	85
c. 125 (Common Law Procedure)	230
s. 78	82
18 & 19 Vict. c. 43 (Infants)	40

	PAGE
18 & 19 Vict. c. 67 (Bills of Exchange)	107
c. 91 (Merchant Shipping)	85
s. 11	88
c. 111 (Bills of Lading)	33
c. 133 (Companies)	169
19 & 20 Vict. c. 47 (Companies)	<i>ib.</i>
c. 60 (Mercantile Law)	
s. 12	108
c. 94 (Administration)	324
c. 97 (Mercantile Law)	272
s. 1	12, 226
s. 2	35
s. 3	22, 233
s. 4	234
s. 5	237
s. 6	112
s. 7	108
s. 9	272
s. 10	273, 281, 327
s. 11	276
s. 12	275
s. 13	278
20 & 21 Vict. c. 57 (Married Women)	294
c. 77 (Probate)	288
s. 23	302, 325
s. 29	288
s. 30	289
ss. 46—48	297
s. 50	<i>ib.</i>
ss. 55—60	<i>ib.</i>
s. 70	298, 319
s. 72	320
s. 73	318
s. 74	320
s. 79	302
ss. 81—83	321
c. 85 (Divorce)	42
s. 21	43
ss. 25, 26	<i>ib.</i>
21 & 22 Vict. c. 95 (County Courts)	288
s. 10	297
s. 12	<i>ib.</i>
s. 16	302
s. 18	320
s. 19	313
c. 108 (Married Women)	
ss. 8—10	43
22 & 23 Vict. c. 35 (Law of Property)	
s. 21	103, 104
ss. 27—29	305
s. 30	328
s. 31	299

TABLE OF STATUTES CITED.

XXXV

	PAGE
22 & 23 Vict. c. 35, s. 32	309
23 & 24 Vict. c. 15 (Administration)	
ss. 4, 5	329
c. 38 (Judgment Debtor—Registration)	
ss. 3—5	231
s. 9	328
ss. 10, 11	309
s. 13	327
c. 126 (Common Law Procedure)	230
c. 127 (Solicitors)	
s. 28	84
c. 145 (Trustees)	
s. 30	311
s. 34	<i>ib.</i>
24 & 25 Vict. c. 92, s. 93	329
c. 96 (Larceny)	9
s. 100	10
c. 101 (Copyright)	219
25 & 26 Vict. c. 38 (Spirits)	59
c. 63 (Merchant Shipping)	85
s. 3	88
c. 68 (Paintings, &c.—Copyright)	220
s. 1	<i>ib.</i> , 221
s. 3	222
ss. 4—6	221
ss. 7—9	222
s. 8	221
s. 10	<i>ib.</i>
ss. 11, 12	222
c. 89 (Companies)	51, 168
s. 2	169, 262
s. 3	170
s. 4	169
ss. 6—10	170
s. 10	171
s. 12	173
s. 14	171
s. 15	172
s. 16	281
s. 18	172
ss. 22—26	<i>ib.</i>
ss. 23—31	175
s. 34	<i>ib.</i>
s. 35	172
s. 38	264, 265
s. 43	147
s. 47	114, 115
s. 48	171
ss. 50, 51	173
ss. 74—78	264
s. 75	269, 281
s. 79	177

	PAGE
25 & 26 Vict. c. 89, s. 79 (4)	263
s. 80	<i>ib.</i>
s. 81	177, 179
s. 82	263
s. 84	265
s. 85	266
s. 87	<i>ib.</i>
s. 98	265
s. 129	178
s. 147	<i>ib.</i>
s. 158	266
s. 163	<i>ib.</i>
s. 164	267
s. 196	264
s. 199	178
s. 199 (3) (<i>b</i>)	263
s. 199 (4)	<i>ib.</i>
ss. 199—204	170
s. 205	168, 169
s. 209	170, 264
pts. vi., vii., & viii.	170
Sched. III.	168
Table A.	172, 174, 175
26 & 27 Vict. c. 57 (Regimental Debts)	231
c. 118 (Companies)	
s. 22	144
s. 34	<i>ib.</i>
27 & 28 Vict. c. 56 (Administration)	
s. 4	329
c. 95 (Administration)	304
28 & 29 Vict. c. 78 (Debentures)	150
s. 37	<i>ib.</i>
s. 38	<i>ib.</i>
c. 86 (Partnership)	
ss. 1—6	7
s. 5	249
c. 99 (County Courts)	
s. 1 (1)	32
s. 1 (5)	262
s. 1 (5)	328
ss. 2, 3	326
s. 5	<i>ib.</i>
s. 8	230
ss. 9, 10	326
29 & 30 Vict. c. 96 (Bills of Sale)	61
c. 108 (Railways)	
s. 10	144
ss. 14—18	<i>ib.</i>
30 Vict. c. 29 (Companies)	168, 173
30 & 31 Vict. c. 35 (Restitution)	
s. 9	10
c. 59 (Assurances)	151

TABLE OF STATUTES CITED.

xxxvii

	PAGE
30 & 31 Vict. c. 124 (Merchant Shipping)	85
c. 127 (Railways)	
s. 26	144
c. 131 (Companies)	168, 171, 173
ss. 4—8	171
ss. 9—22	173
s. 23	171
s. 24	174
s. 25	<i>ib.</i>
s. 26	172
ss. 27—32	175
s. 37	51, 114
s. 38	176
s. 40	263
ss. 41—46	179
c. 142 (County Courts)	
s. 4	59
s. 24	328
c. 144 (Assurance)	152
ss. 1, 2, 5	<i>ib.</i>
s. 3	153
31 & 32 Vict. c. 86 (Marine Assurance)	159
ss. 1, 2	<i>ib.</i>
c. 124 (Administration)	
s. 7	328
c. 129 (Merchant Shipping)	85
32 Vict. c. 11 (Merchant Shipping)	<i>ib.</i>
32 & 33 Vict. c. 46 (Administration)	232
c. 48 (Companies)	
ss. 1—4	144
c. 62 (Debtors)	
ss. 4, 5	224
s. 5	242
c. 71 (Bankruptcy)	
s. 92	259, 261
33 Vict. c. 14 (Naturalisation)	
s. 14	86
33 & 34 Vict. c. 35 (Apportionment)	285
c. 61 (Life Assurance Companies)	170
c. 93 (Poor—Guardians)	153
s. 10	<i>ib.</i>
c. 102 (Naturalisation)	86
c. 104 (Companies)	168
34 & 35 Vict. c. 58 (Life Assurance)	170
c. 87 (Sunday Observance)	60
c. 110 (Merchant Shipping)	85
35 & 36 Vict. c. 39 (Naturalisation)	86
c. 41 (Life Assurance)	170
s. 4	177
s. 8	170
c. 44 (Chancery Funds)	309
c. 73 (Merchant Shipping)	85

	PAGE
35 & 36 Vict. c. 93 (Pawnbrokers)	78
s. 10	<i>ib.</i>
s. 16	<i>ib.</i>
s. 17	<i>ib.</i>
s. 18	79
s. 19	<i>ib.</i>
s. 24	78
s. 27	79
s. 28	<i>ib.</i>
36 & 37 Vict. c. 35 (Debentures)	149
s. 5	150
s. 11	<i>ib.</i>
s. 13	<i>ib.</i>
s. 14	<i>ib.</i>
c. 66 (Judicature)	
s. 16	288
s. 24	101
s. 25 (6)	100
s. 25 (8)	229
s. 25 (11)	6, 101
s. 31	289
s. 34	262
s. 34 (3)	325
c. 85 (Merchant Shipping)	85
37 & 38 Vict. c. 42 (Building Societies)	179
s. 4	<i>ib.</i>
s. 32	<i>ib.</i>
c. 57 (Limitation)	327
ss. 8, 9	<i>ib.</i>
c. 62 (Infants)	37, 40
s. 1	37
s. 2	<i>ib.</i>
c. 85 (Judicature)	
s. 10	232
38 & 39 Vict. c. 9 (Building Societies)	179
c. 12 (International Copyright)	222
c. 55 (Public Health)	
s. 174	51
c. 60 (Friendly Societies)	179
s. 15 (7)	231
c. 66 (Companies)	169
c. 77 (Judicature)	
s. 2	289
s. 10	266
s. 18	289
c. 91 (Trade Marks)	202
39 & 40 Vict. c. 36 (Customs)	213, 217
s. 42	<i>ib.</i> , <i>ib.</i>
ss. 44, 45	<i>ib.</i> , <i>ib.</i>
c. 45 (Industrial and Provident Societies)	179
s. 6	<i>ib.</i>
s. 17	<i>ib.</i>

	PAGE
39 & 40 Vict. c. 80 (Merchant Shipping)	85
c. 81 (Cheques)	135
40 & 41 Vict. c. 26 (Companies)	169, 173
c. 39 (Factors)	
s. 2	79
s. 5	34
c. 63 (Building Societies)	179
41 & 42 Vict. c. 13 (Bills of Exchange)	112
c. 31 (Bills of Sale)	61, 147
s. 1	62
s. 3	74
s. 4	62, 63, 74, 88, 147
s. 5	62, 63
s. 7	66
s. 8	74
s. 10	65, 74, 76, 147
(2)	65
(3)	<i>ib.</i>
s. 11	<i>ib.</i>
s. 13	<i>ib.</i>
s. 14	66
s. 15	76
s. 21	65, 76
s. 23	62
c. 38 (Innkeepers)	83
c. 54 (Debtors)	
s. 1	224
42 & 43 Vict. c. 76 (Companies)	169
s. 5	174
43 Vict. c. 14 (Administration)	
ss. 9, 10	328
s. 11	335
s. 13	329, 332
c. 19 (Companies)	169
43 & 44 Vict. c. 18 (Merchant Shipping)	85, 87
c. 22 (Merchant Shipping)	85
c. 43 (Merchant Shipping)	<i>ib.</i>
44 Vict. c. 12 (Customs)	328
s. 28	<i>ib.</i>
ss. 31—36	329
s. 36	332
ss. 38—40	329
s. 41	332, 333
s. 43	335
44 & 45 Vict. c. 41 (Conveyancing and Law of Property)	
s. 2 (1)	1
s. 7	72
s. 19	68
s. 20	<i>ib.</i> , 73
s. 34 (1) (2) (3)	103
s. 37	311, 312
s. 38	7, 300

	PAGE
44 & 45 Vict. c. 41, s. 39	49
s. 40	<i>ib.</i>
s. 43	4
s. 50	103
s. 60	52
s. 71	311
45 & 46 Vict. c. 38 (Settled Land)	
s. 64	<i>ib.</i>
c. 39 (Conveyancing)	
s. 1 (4) (i.)	1
s. 7	73, 294
c. 40 (Music—Copyright)	213, 215
c. 43 (Bills of Sale)	61
s. 2	67
s. 3	63, 64, 66, 74, 76
s. 4	66
s. 5	<i>ib.</i>
s. 6	<i>ib.</i>
s. 7	67, 68, 69
s. 7 (2)	73
s. 7 (4)	71
s. 8	65, 74
s. 9	64, 68, 69, 70, 74
s. 10	65, 74
s. 12	64
s. 13	68
s. 15	67
s. 17	147
c. 50 (Corporations)	
s. 70 (2)	263
c. 61 (Bills of Exchange)	107
s. 2	112, 113, 139
s. 3	107
s. 4	108
s. 7	109
s. 8	<i>ib.</i> , 119
s. 8 (1)	120
s. 9 (3)	130
s. 10	110, 140
s. 11	110
s. 13	111
s. 14	<i>ib.</i>
s. 15	<i>ib.</i> , 132
s. 17	111
s. 19 (2)	112
s. 19 (2) (a)	120
s. 19 (2) (c)	123
s. 20	113, 130
s. 21	112, 113, 119, 139
s. 22	114
s. 23	115
s. 24	<i>ib.</i>

TABLE OF STATUTES CITED.

xli

	PAGE
45 & 46 Vict. c. 61, ss. 25, 26	116
s. 27	117
s. 28	<i>ib.</i> , 118
s. 29	118, 121
s. 30	117
s. 31	119
s. 32 (1)	<i>ib.</i>
s. 32 (4)	<i>ib.</i>
s. 32 (6)	120
ss. 33, 34	<i>ib.</i>
s. 35 (1)	<i>ib.</i>
s. 36	<i>ib.</i>
s. 36 (3)	140
s. 38	121
s. 39 (1), (2), (3)	<i>ib.</i>
s. 40	122
s. 41 (1), (2)	<i>ib.</i>
ss. 42, 44	<i>ib.</i>
s. 43	111
s. 43 (1)	120
s. 45	123
ss. 45, 46	140
s. 46	135
s. 46 (1)	124, 126
s. 46 (2)	123, 125
s. 47	111, 124
s. 47 (1)	120
s. 48	124
s. 49	125
s. 50	127
s. 50 (1)	126
s. 50 (2)	125
s. 51	131
s. 51 (1), (2)	127
s. 51 (5), (9)	<i>ib.</i>
s. 51 (7)	126
s. 51 (8)	127
s. 52	128, 140
s. 53 (2)	107
s. 54	128
s. 55	<i>ib.</i>
s. 56	129
s. 57	<i>ib.</i>
s. 57 (1)	270
s. 59 (1), (3)	130
s. 60	116
ss. 61—64	130
s. 65	131
s. 65 (3)	132
s. 66	131
s. 67	132
s. 68	<i>ib.</i>

	PAGE
45 & 46 Vict. c. 61, s. 71	133
s. 72	134
s. 72 (3)	135
s. 73	<i>ib.</i>
s. 74	<i>ib.</i>
s. 75	136
s. 76 (1)	<i>ib.</i>
s. 76 (2)	137
s. 77	<i>ib.</i>
s. 81	<i>ib.</i>
s. 82	138
s. 83	139
s. 84	<i>ib.</i>
s. 85	140
s. 86	<i>ib.</i>
s. 87	<i>ib.</i>
s. 88	<i>ib.</i>
s. 89	141
s. 91	114, 115
s. 93	127
s. 94	<i>ib.</i>
s. 95	138
s. 96	108, 112, 135
s. 97	131, 136
s. 97 (1)	107
s. 97 (2)	<i>ib.</i> , 129
s. 97 (2), (b)	114
s. 97 (3), (a)	138
s. 98	107
s. 100	<i>ib.</i>
Sched. I	127
c. 75 (Married Women)	97, 153, 252, 295, 297
s. 1	290, 298
s. 1 (1)	44, 291
s. 1 (2)	44, 274
s. 1 (3)	45
s. 1 (4)	<i>ib.</i>
s. 1 (5)	<i>ib.</i> , 240, 252
s. 2	46, 290, 291
s. 3	249
s. 4	252
s. 5	46, 290, 291
ss. 6—10	98
s. 11	153, 154, 257
s. 12	48, 275
s. 13—15	47, 282
ss. 13, 14	265
s. 14	283
s. 15	284
s. 17	48, 98
s. 18	98, 298
s. 19	45, 48, 49, 284, 290, 291

TABLE OF STATUTES CITED.

xliii

	PAGE
45 & 46 Vict. c. 75, s. 23	296
s. 24	2, 298
s. 25	292
46 & 47 Vict. c. 28 (Companies)	169
c. 41 (Merchant Shipping)	85
c. 52 (Bankruptcy)	153, 239, 257
s. 4 (1), (a)—(d)	240
s. 4 (1), (b)	257
s. 4 (1), (c)	259
s. 4 (1), (e)	251
s. 4 (1), (e), (g)	239
s. 4 (1), (f), (h)	240
s. 4 (1), (f)	241
s. 5	242
ss. 5, 6	241
s. 6 (2)	250
s. 6 (c)	251
s. 7 (3), (4), (5)	242
s. 8	241
s. 8 (1)	240
s. 9	242
s. 9 (2)	249
s. 10 (1), (2)	242
s. 12	<i>ib.</i>
s. 18 (1)	243
s. 18 (10), (11)	<i>ib.</i>
s. 20 (1)	244, 251
s. 21 (1)	244
s. 22 (1)	<i>ib.</i>
s. 23	245
s. 23 (1), (3)	243
s. 28 (2), (3), (6)	246
ss. 28, 29	245
s. 30 (1), (2)	246
s. 37 (1)—(3), (8)	<i>ib.</i>
s. 37 (4)—(7)	247
s. 38	<i>ib.</i>
s. 39	249—270
s. 40 (1), (2)	247
s. 40 (3)	241, 248
s. 40 (5)	271
s. 42	249
s. 43	251
s. 44 (1), (2)	252
s. 44 (i)	246
s. 44 (i), (ii)	251
s. 44 (iii)	253
s. 45	250
s. 46 (1), (2)	<i>ib.</i>
s. 46 (3)	251
s. 47	153, 256, 257
s. 48 (1)	259

	PAGE
46 & 47 Vict. c. 52, s. 48 (2)	260
ss. 48, 49	261
s. 49	258
s. 50—54	244
s. 53 (1), (2)	255
s. 56 (1), (2)	245
s. 56 (4)	251
s. 57 (1), (4)—(9)	245
s. 59	241, 248
s. 64	245
s. 66	242
s. 70	<i>ib.</i>
s. 70 (1) (c)	243
s. 70 (1) (g)	244
s. 92	241
ss. 95, 96	<i>ib.</i>
s. 103 (5)	243, 261
s. 108	262
ss. 110—115	241
s. 111	242
s. 121	244
s. 122	243, 261
s. 123	262
s. 125	244, 261
s. 125 (3)	262
s. 145	226
s. 147	262
s. 152	153, 240, 257
s. 168 (1)	240, 250, 252
Sched. I.	243
r. 12	249
r. 13	241
Sched. II., rr. 9—12	249
r. 16	<i>ib.</i>
r. 18	241
r. 20	270
c. 57 (Patents, Designs, and Trade Marks)	181, 220
s. 3	191, 192
s. 4 (1), (2)	182
s. 5 (1), (2)	<i>ib.</i>
s. 5 (2), (3), (4), (5)	185
s. 6	186
s. 7 (1), (2), (3)	<i>ib.</i>
s. 7 (5), (6)	187
s. 8	185
s. 9 (1), (2), (3)	186
s. 9 (4), (5)	187
s. 10	<i>ib.</i>
s. 11 (1)	188
s. 11 (2), (3), (4)	189
s. 12 (1), (2), (3)	<i>ib.</i>
s. 13	187, 189

TABLE OF STATUTES CITED.

xlv

	PAGE
46 & 47 Vict. c. 57, ss. 14—17	190
s. 18 (9)	193
ss. 18—21	128
s. 22	192
s. 23 (1), (2)	193
s. 23 (3)	194
s. 24	190
s. 25	191
s. 26 (1), (2), (3), (4)	192
s. 26 (8)	193
s. 27	191
s. 32	194
s. 33	189
s. 34	<i>ib.</i>
s. 35	193
s. 36	<i>ib.</i>
s. 37	190
s. 39	185
ss. 40, 41	187
s. 43	192
s. 44	191
s. 45 (2)	191, 192
s. 46	182, 183
s. 47 (1), (2), (3)	197
s. 47 (4), (5), (6), (7)	198
s. 48 (2)	<i>ib.</i>
s. 49	<i>ib.</i>
s. 50 (1)	<i>ib.</i>
s. 50 (2)	199
s. 51	<i>ib.</i>
s. 52	200
s. 53	200
ss. 54, 55	199
s. 56	200
s. 57	198
s. 58	200, 201
s. 59	201
s. 60	196, 220
s. 61	197
ss. 62, 63	203
s. 64 (1), (2)	202
s. 65	203
ss. 66, 67	205
s. 68	203
s. 69 (1), (2)	<i>ib.</i>
s. 69 (3), (4)	204
s. 70	207
s. 71, 72	204
s. 73	203
s. 74 (1) (a), (2)	206
ss. 75—77	<i>ib.</i>
s. 78—80	207

	PAGE
46 & 47 Vict. c. 57, s. 81	208
s. 82	186
s. 82 (1)	182
s. 83	186
s. 84	189
s. 85	194, 199, 207
s. 86	190, 198
s. 87	199
ss. 87—89	207
ss. 87—91	194
s. 88—91	200
s. 90	208
s. 91	<i>ib.</i>
s. 92	207
s. 94	186, 190
s. 95	190
s. 99	182
s. 101	181, 196, 202
s. 103 (1), (2), (3)	209
s. 104	<i>ib.</i>
s. 105	195, 201
ss. 107—112	181
s. 113	196, 202, 220
ss. 116, 117	182
s. 117	186, 192, 194, 197, 202
Sched. I.	189, 197, 203
Sched. III.	220
47 & 48 Vict. c. 41 (Building Societies)	179
c. 71 (Intestates' Estates)	
ss. 2, 3	317
48 & 49 Vict. c. 51 (Inland Revenue)	
s. 11	335
Pt. II.	<i>ib.</i>
c. 63 (Patents, Designs, and Trade Marks)	181, 196, 202
s. 2	182
s. 3	185, 187, 189
s. 4	187
s. 5	182, 186
s. 6	209
49 Vict. c. 23 (Companies)	169
49 & 50 Vict. c. 28 (Bankruptcy)	
s. 3	247
c. 33 (International Copyright)	222
s. 8	214, 223
c. 37 (Patents, Designs, and Trade Marks)	181, 196
s. 2	185
s. 3	185, 198
50 Vict. c. 5 (Expiring Laws Continuance)	60

RULES OF SUPREME COURT.

	PAGE
R. S. C. 1880, Ord. XLVI. r. 2 <i>a</i> .	99
1882	65
1883, Ord. XIV.	107
Ord. XVII.	276
Ord. XIX. r. 15	28, 281
Ord. XXII. r. 17	309
Ord. XLII.	
r. 1	224
r. 3	<i>ib.</i>
r. 6	225, 229
r. 10	225
r. 16	270
r. 17	225
rr. 22, 23 (<i>a</i>)	230
r. 23 (<i>a</i>) (<i>b</i>) (<i>c</i>)	<i>ib.</i>
r. 23 (<i>d</i>).	231
r. 24	224
r. 28	224, 225
rr. 31—33	225
r. 32	228
Ord. XLIII.	
r. 2	226
rr. 3—5	227
r. 5	226
r. 6	225
rr. 6, 7	229
Ord. XLIV.	224
Ord. XLV.	225, 227
r. 2—6	<i>ib.</i>
Ord. XLVI.	
r. 1	225, 228
r. 2	99
rr. 2—11	98
r. 8	99
rr. 12—13	100
r. 14	98
Ord. XLVIII.	82
r. 1.	225
rr. 1, 2	229
Ord. L. r. 8	84
Ord. LII. rr. 19—22.	328
Ord. LV.	325
r. 2	328
r. 5 <i>A</i> , (<i>h</i>)	299
r. 57	282
rr. 62, 63	270
Ord. LXI.	
rr. 25—27	65
r. 26	76
r. 27	<i>ib.</i>

	PAGE
R. S. C. 1883, Ord. LXV., r. 26	328
Ord. LXXI.	
r. 1	224
App. B.	227
App. H.	226, 227, 229
App. K.	228

RULES OF COUNTY COURT (1886).

R. C. C. 1886, Ord. III. rr. 17—29	326
Ord. VI. r. 6.	<i>ib.</i>
Ord. X. r. 14	281
Ord. XXII. r. 11	326
Ord. XXIV.	<i>ib.</i>
Ord. XXV.	
r. 1	230
rr. 4—12	<i>ib.</i>
r. 9 (c)	231
r. 50	82, 230
r. 51	230
Ord. XXVI.	<i>ib.</i>
Ord. XXXVIII. r. 1	328
Ord. XXX.	304, 325
r. 10	230
Ord. XLIX.	297
Ord. LI. r. 13	270

RULES, BANKRUPTCY (1886).

G. R. 6 (e)	261
86	242, 244, 261
157—169	242
190	244
227—331	282

*** * Where reference is made to GOODEVE'S
MODERN LAW OF REAL PROPERTY it is
cited as M. L. R. P.**

THE MODERN LAW

OF

PERSONAL PROPERTY.

INTRODUCTION.

THIS treatise is upon that branch of the Law of Property which deals with things movable, or goods and chattels (excluding chattels real), or personal property (excluding leaseholds) (*a*). It comprises, on the one hand, corporeal chattels or choses in possession; on the other hand, incorporeal chattels or choses in action. Examples of the latter class are debts, stock in the public funds, shares in companies, patents, copyrights, &c. Among the former class are included trees, cut or blown down, and severed from the land, and the fruit or produce when severed from the body of the tree, tenant's fixtures, and animals *domitæ naturæ*. Both classes are expressly mentioned in the definition of property in the Conveyancing Act, 1882 (*b*). In that Act 'property' includes "real and personal property, and any debt, and any thing in action, and any

Intro.

Personal or movable property.
(Choses in possession—choses in action.)

(*a*) As to the origin and meaning of these classifications and what they comprehend, see M. L. R. P. Intro. part i.; and, as to chattels real or leaseholds, *ib.* ch. v.

(*b*) 45 & 46 Vict. c. 39, s. 1 (4) (i.); and see Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41), s. 2 (i.).

Intro. other right or interest in the nature of property, whether in possession or not." Also in the Married Women's Property Act, 1882, 'property' includes a thing in action (*c*). In the Wills Act (*d*) 'personal estate' extends to "monies, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, and goods."

Contrasted
with real or
immovable
property.

"The law of property in movables," says Professor Bell, "is less peculiar than that of territorial property. Movables were of little consideration under our early law. Possession was the badge of property in them while a man lived; and, by equal division among his family on his death, those of his movables were disposed of which were not requisite for the heir's equipment for his feudal duties. Movables unaffected by any of the rules of the feudal law, remained under the rules of a jurisprudence immediately derived from the Civilians; in many of its doctrines modified, and in some respects improved, by the Canonists. In modern times, movable property is frequently of much greater value than property in land. It is the part of the wealth of the people most generally diffused, and the most frequent subject of transaction and of transference. And although it makes not so great a figure in our law books, the modes of its transference being simple, and less exposed to those blunders and mistakes out of which so much litigation and so many doubts arise, a correct knowledge of the rules by which it is regulated, and of their combinations, is of great consequence in the daily transactions of life" (*e*).

No heir.

Personal property upon the death of the owner domiciled in England, in the absence of testamentary or other disposition, goes through an administrator appointed by the Court beneficially to the next of kin of the deceased, who are ascertained under the Statute of Distributions (*f*), not

(*c*) 45 & 46 Vict. c. 75, s. 24.

(*d*) 1 Vict. c. 26, s. 1.

(*e*) Bell's Principles of the Law of

Scotland, edited by Guthrie, § 1283.

(*f*) 22 & 23 Car. II. c. 10. See

post, ch. xiv.

to the heir. It is subject to the law which governs the person of the owner; and, therefore, if he dies, it is not the law of the country in which the property is, but the law of the country of which he is a subject, that will regulate the succession—*mobilia sequuntur personam*.

Intro.
Domicile of
owner.

Personal property (excluding chattels real or leaseholds) is not the subject of tenure but of absolute ownership, and, therefore, cannot be held for an 'estate' (g). Although in assigning an absolute interest by deed, it has been usual to assign it to a man, his executors, administrators and assigns, as an interest in land in fee simple was conveyed to a man, his heirs and assigns, there was no necessity for doing so; and since the Conveyancing Act did away with the necessity of limiting an estate in fee simple to a man and his heirs (h), the practice has been less common. For the purpose of giving limited interests, or interests in succession, the interposition of trustees is strictly necessary; and powers are conferred upon them in the same manner and subject generally to the same rules as upon trustees of real estate (i). For instance, supposing a man about to marry desires to settle a sum of stock for the benefit of his wife and the issue of the marriage, he would transfer it into the names of trustees, and by the settlement declare that it should be held by them on trust to pay the income (say) to his wife during the joint lives of himself and his wife, then to the survivor for life, and after on trust for the issue of the marriage on attaining majority, equally or as the parents may appoint, with powers of maintenance, education, and advancement in the meantime.

No estate.

Limited or
successive
interests—
trusts—
powers—
settlements.

(g) See M. L. R. P. 39.

(h) See M. L. R. P. 86.

(i) As to powers, see M. L. R. P.

320 *et seq.* as to trustees, *ib.* 278
et seq.

Intro.

The power of applying the income of property for the maintenance, education, or benefit of an infant need no longer be expressly conferred by the instrument creating the trust; for trustees are now empowered by the Conveyancing and Law of Property Act, 1881, in the absence of expression of contrary intention, to apply the income of any property held by them for an infant, whether for life or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one or the occurrence of any event before, and they are directed to accumulate the income at compound interest(*j*). The trustees are in law the owners of the property transferred to them, and deal with it as principals, as owners, and as masters, subject only to an equitable obligation to account to those persons to whom they stand in the relation of trustees, and who are their *cestuis que trust* (*k*). But in the case of disposition by will the gift may be made direct to the successive takers, who, therefore, seem to take an estate: in fact the Court, in place of trustees, is ready to interpose for the protection of the successive interests, and thus preserve the property through the whole number of successive takers for the benefit of the person entitled to the ulterior and absolute interest (*l*). The nature of the property may prevent the possibility of future interests; thus articles *quæ ipso usu consumuntur* must be given absolutely, unless they form part of a stock-in-trade (*m*); and even then the interest will be held to be absolute if the taker is not to be liable to

(*j*) 44 & 45 Vict. c. 41, s. 43. As to receipts by trustees, retirement of trustees, appointment of new trustees, and vesting the trust property in them by declaration, and the powers of trustees generally, see M. L. R. P.

282—4 *et seq.*

(*k*) See *per* James, L.J., in *Smith v. Anderson*, L. R. 15 Ch. D. 275.

(*l*) Jarman on Wills, i. 879, 880.

(*m*) *Ib.*; and Theobald on Wills, 439.

Intro.

account for any diminution or depreciation in the stock (*n*). A limited interest of the nature of an estate tail cannot be created in personalty; an attempt to do so would give the absolute interest to that person who, if the subject-matter were realty, would be the first tenant in tail.

“For,” says Blackstone (*o*), “this, if allowed, would tend to a perpetuity, as the devisee or grantee in tail of a chattel has no method of barring the entail; and therefore the law vests in him at once the entire dominion of the goods.”

The rule against perpetuities, that is, against tying up property beyond a limited period, applies equally to real and to personal property. So that personal property may not, any more than real property, be so disposed of as to render the *corpus* inalienable for a longer period than a life or a series of lives in being at the time of the disposition and twenty-one years afterwards, with a further period of gestation where existing (*p*). Similarly, as in the case of realty, the periods during which alone income may be accumulated are prescribed by the Thellusson Act (*q*). Perpetuity.

Personal property, like real property, may be owned by several jointly with benefit of survivorship, or in common, or it may be owned in severalty. Says Blackstone (*r*):— Ownership
(joint—in
common—in
severalty).

“If a horse, or other personal chattel, be given to two or more, absolutely, they are joint-tenants hereof; and, unless the jointure be severed, the same doctrine of survivorship shall take place as in estates of lands and tenements. And, in like manner, if the jointure be severed, as by either of them selling his share, the vendee and the remaining part-owner shall be tenants in common, without any *jus accrescendi* or survivorship. So also, if

(*n*) *Breton v. Mockett*, L. R. 9 Ch. D. 95.

(*o*) Vol. ii. 398.

(*p*) See M. L. R. P. 101 *et seq.*, 233.

(*q*) 39 & 40 Geo. III. c. 98. See M. L. R. P. 103 *et seq.*

(*r*) 2 Bl. 399.

Intro.

£100 be given by will to two or more, *equally to be divided between them*, this makes them tenants in common; as the same words would have done in regard to real estates."

Partners.

The legal maxim *jus accrescendi inter mercatores locum non habet* applies to prevent a right of survivorship in partnership chattels. And the same law which excepts the goods of merchants, for the benefit of commerce, from the general law of joint tenancy, extends to those of manufacturers (s). In truth, the share of each partner is not a share in any specific asset or any specific part of the assets, but is his share of what will ultimately come to him when the accounts are ascertained, and when the partners who are to contribute have contributed, and when the assets are got in, the debts paid, and the amounts realised (t).

The joint ownership in partnership property, or joint share in the profits of the business, gave rise to the joint liability of the partners at law; in equity their liability was held to be several as well as joint, that is to say, each singly, as well as all of them collectively, was responsible for all the debts and engagements of the firm; and now the rules of equity prevail (u). The joint interest in the assets or profits of the business giving rise to the liability, it will extend even to a dormant partner; on the other hand, the letting it be supposed that one is a partner, whereby credit is given to the firm, even though having no longer any interest, will make such person liable (x). The hardship caused by the mere interest in the profits of the business constituting liability to third parties as a partner

(s) *Buckley v. Barber*, 6 Ex. 164.

(t) *Per James, L.J.*, in *Ashworth v. Munn*, L. R. 15 Ch. D. 370; and see *M. L. R.*, P. 14.

(u) *Jud. Act. 1873* (36 & 37 Vict. c. 66, s. 25, § 11).

(x) See *Smith's Mer. Law*, Bk. i, ch. 2.

gave rise to Bovill's Act to amend the law of Partnership, which enacted that a loan to a person (including a firm, a company, and a corporation), engaged or about to engage in any trade or undertaking, upon a contract in writing that the lender should receive a rate of interest varying with the profits, or a share of the profits, should not of itself constitute him a partner (*y*); nor a contract for the remuneration of a servant or agent by a share of the profits (*z*); nor the receipt by way of annuity by the widow or child of a deceased partner of a portion of the profits (*a*); nor the receipt by way of annuity or otherwise of a portion of the profits in consideration of the sale of the goodwill of the business (*b*); but in the event of bankruptcy of the partnership such lender or vendor is not to be entitled to recover any profits until the claims of the other creditors have been satisfied (*c*).

Intro.

When a chose in action is in joint names, for instance, stock in the public funds in the names of two trustees, the legal right is in the survivor (*d*), though he may be responsible to others in equity.

Joint chose
in action.

And, by virtue of the Conveyancing and Law of Property Act, 1881, where a power or trust is given to or vested in two or more executors or trustees jointly, under instruments coming into operation after 1881, in the absence of expression of contrary intention, the same may be exercised or performed by the survivor or survivors for the time being (*e*).

Joint power
or trust.

(*y*) 28 & 29 Vict. c. 86, ss. 1, 6.

(*z*) S. 2.

(*a*) S. 3.

(*b*) S. 4.

(*c*) S. 5. See generally upon the Act, Lindley on Partnership, 43 *et seq.*

(*d*) *Crossfield v. Such*, 8 Ex. 825.

(*e*) 44 & 45 Vict. c. 41, s. 38.

Chap. I.

CHAPTER I.

CORPOREAL THINGS—CHoses IN POSSESSION.

Nature of. CORPOREAL goods and chattels, or 'choses in possession,' include all things which, being themselves capable of motion or of being moved, may be perceived by the senses—seen, touched, taken possession of: as ships, household furniture; goods and effects of all kinds; farm stock and implements; horses, cattle, and other animals; corn, money, jewels, wearing apparel, &c. (a); in short, live stock or dead, manufactured goods or raw material, everything capable of touch and not fixed to the soil (b).

I. Transfer of
A. by delivery. Delivery of immediate possession of the article is the most natural and simplest method of transferring the property in it from one person to another; a mere verbal gift of goods without delivery will not pass the property to the donee (c).

Title. The most common instance of transfer by delivery is in the case of sale, and for its validity ownership by the vendor is generally necessary.

Market overt. An exception to this occurs in the case of sales in fairs or markets overt, and is part of the common law of England. It is thus expressed by Blackstone (d):—

“Market overt (that is, open) in the country is only held on the special days provided for particular towns by charter or

(a) Bell's Principles of the Law of Scotland, by Guthrie, § 1285. As to 'animals,' see M. L. R. P. 13.

(b) Blackburn on Sale, Ed. by T. G. Graham, Intro.

(c) See *Irons v. Smallpiece*, 2 B. & Ald. 551.

(d) 2 Bl. 449. See the Case of Market Overt, 5 Co. 83b; and Tudor's L. Ca. in Mer. Law, 274.

prescription; but in London every day, except Sunday, is market day. The market place, or spot of ground set apart by custom for the sale of particular goods, is also in the country the only market overt; but in London every shop in which goods are exposed publicly to sale, is market overt, for such things only as the owner professes to trade in. But if my goods are stolen from me, and sold, out of market overt, my property is not altered, and I may take them wherever I find them. . . .

“And even in market overt, if the goods be the property of the king, such sale (though regular in all other respects) will in no case bind him; though it binds infants, feme coverts, idiots, or lunatics, and men beyond sea or in prison: or if the goods be stolen from a common person, and then taken by the king's officer from the felon, and sold in open market; still, if the owner has used due diligence in prosecuting the thief to conviction, he loses not his property in the goods. So likewise, if the buyer knoweth the property not to be in the seller; or there be any other fraud in the transaction; if he knoweth the seller to be an infant, or feme covert, not usually trading for herself; if the sale be not originally and wholly made in the fair or market, or not at the usual hours; the owner's property is not bound thereby. If a man buys his own goods in a fair or market, the contract of sale shall not bind him so as that he shall render the price, unless the property had been previously altered by a former sale. And, notwithstanding any number of intervening sales, if the original vendor, who sold without having the property, comes again into possession of the goods, the original owner may take them, when found in his hands who was guilty of the first breach of justice. By which wise regulations the common law has secured the right of the proprietor in personal chattels from being divested, so far as was consistent with that other necessary policy, that purchasers *bonâ fide*, in a fair, open, and regular manner, should not be afterwards put to difficulties by reason of the previous knavery of the seller.

In the case of a sale of a stolen chattel, notwithstanding Larceny Act. the sale was in market overt, the property will, by virtue of the Larceny Act, 1861 (e), revert in the true owner upon

(e) 24 & 25 Vict. c. 96.

Chap. I.

his prosecuting the thief to conviction (*f*), and at the date of conviction (*g*). They must be restored by the person who has them in his possession, although a *bonâ fide* purchaser for value; unless he is protected by the proviso to the clause of the statute (*h*). It is enacted:—

S. 100. “If any person guilty of any such felony or misdemeanor as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence, by or on behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid, the Court before whom any person shall be tried for any such felony or misdemeanor shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner: Provided, that if it shall appear before any award or order made that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, in such case the Court shall not award or order the restitution of such security: Provided also, that nothing in this section contained shall apply to the

(*f*) 24 & 25 Vict. c. 96, s. 100, which took the place of 7 & 8 Geo. IV. c. 29, s. 57, by which restoration was given to owners in cases also of misdemeanor; the old statute (21 Hen. VIII. c. 11, thereby repealed) gave it only in case of felony. See also 30 & 31 Vict. c. 35, s. 9, by which money

found upon the thief may be applied to reimburse the purchaser.

(*g*) *Lindsay v. Cundy*, L. R. 1 Q. B. D. 348.

(*h*) See *Vilmont v. Bentley*, L. R. 18 Q. B. D. 322, and *per* Lindley, L.J., 330.

case of any prosecution of any trustee, banker, merchant, attorney, factor, broker, or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanor against this Act."

Chap. I.

This includes the case of the goods having in the first instance been obtained by false pretences (i):

Special statutory provisions (k) were made more than 300 Horses. years ago for the protection of the owners of horses in case of sale, by which the passing of the property in them, notwithstanding sale in market overt, is still regulated. The reasons for and nature of such provisions are thus given by Blackstone (l):—

"There is one species of personal chattels, in which the property is not easily altered by sale, without the express consent of the owner, and those are horses; the sale of which, even in fairs or markets overt, is void in many instances, where that of other property is valid: because a horse is so fleet an animal, that the stealers of them may flee far off in a short space, and be out of the reach of the most industrious owner. All persons, therefore, that have occasion to deal in horses, and are therefore liable sometimes to buy stolen ones, would do well to observe, that whatever price they may give, or how long soever they may keep possession before it be claimed, they gain no property in a horse that has been stolen, unless it be bought in a fair or market overt: nor even then, unless the directions be pursued that are laid down in the statutes 2 P. & M. c. 7, and 31 Eliz. c. 12. By which it is enacted, that every horse, so to be sold, shall be openly exposed, in the time of such fair or market, for one whole hour together, between ten in the morning and sunset, in the open and public place used for such sales, and not in any private yard or stable: that the horse shall be brought by both the vendor and vendee to the toll-gatherer or book-keeper of such

(i) *Vilmont v. Bentley*, L. R. 18 Q. B. D. 322 (overruling *Moyce v. Newington*, 4 Q. B. D. 32).

(k) 2 & 3 Ph. & M. c. 7 (1555), and 31 Eliz. c. 12 (1589).

(l) Vol. ii. 450.

Chap. I.

fair or market : that toll be paid, if any be due ; and if not, one penny to the book-keeper, who shall enter down the price, colour, and marks of the horse, with the names, additions, and abode of the vendee and the vendor ; the latter either upon his own knowledge, or the testimony of some credible witness. And, even if all these points be fully complied with, yet such sale shall not take away the property of the owner, if within six months after the horse is stolen he puts in his claim before the mayor, or some justice, of the district in which the horse shall be found ; and within forty days after that, proves such his property by the oath of two witnesses before such mayor or justice ; and also tenders to the person in possession such price as he *bonâ fide* paid for him in market overt. But in case any one of the points before-mentioned be omitted, or not observed in the sale, such sale is utterly void ; and the owner shall not lose his property, but at any distance of time may seize, or bring an action for, his horse wherever he happens to find him. Wherefore, Sir Edward Coke observes, that, both by the common law and these two statutes, the property of horses is so well preserved, that if the owner be of capacity to understand them, and be vigilant and industrious to pursue the same, it is almost impossible that the property of any horse either stolen or not stolen should be altered by any sale in market overt by him that is *malâ fide possessor*."

Mercantile
Law
Amendment
Act, 1856.

It is enacted by the Mercantile Law Amendment Act, 1856 (*m*), that no writ of execution or of attachment (*n*) against the goods of a debtor shall prejudice the title to such goods acquired by any person *bonâ fide* and for valuable consideration before their actual seizure or attachment by virtue of such writ ; provided such person had not, at the time he acquired such title, notice that any writ, by virtue of which the goods of such owner might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff, under-sheriff, or coroner. Since the Statute of Frauds (*o*), the delivery of a writ to the

(*m*) 19 & 20 Vict. c. 97, s. 1.

(*n*) *Post*, ch. xi.

(*o*) 29 Car. II. c. 3, s. 16.

sheriff binds the property and confers a right to sell, but Chap. I.
does not change the ownership (*p*).

The property in goods may also pass without delivery of B. by contract.
possession, namely, by virtue of an agreement or contract
concerning the sale of them, or by deed.

By the common law all that is essential to a contract or
agreement is the mutual assent of both parties and a con-
sideration; without a valuable consideration the agree-
ment is merely honorary and will not be enforced by law
(*nudum pactum*): if the agreement be by deed, the law
presumes that it is made upon good and sufficient con-
sideration. By the statute for the Prevention of Frauds
and Perjuries, where the sale of the goods is for £10 or
upwards, there must be the evidence thereby prescribed of
the contract (*r*). But equity will enforce an express de-
claration of trust, although there has been no consideration
and no transmutation of possession; and the declaration or
creation of the trust may be by parol, for the provision of
the Statute of Frauds requiring a writing for the declara-
tion or creation of trusts relates only to lands (*s*). (declaration
of trust.)

A contract for the sale of goods may be what is termed
'executory,' that is, when the property has not passed,—or
'executed,' that is, when the property has passed. Says
Lord Blackburn (*t*):—

“It may be an agreement perfectly binding on the parties so as
to give either of them a remedy against the person and general
estate of the other for any default in fulfilling his part of the
agreement, but having no effect on the property or right of pos-
session in the goods, and giving the proposed purchaser neither

(*p*) *Woodland v. Fuller*, 11 Ad. &
El. 859.

(*r*) 29 Car. II. c. 3, s. 17; amended
by 9 Geo. IV. c. 14, s. 7.

(*s*) 29 Car. II. c. 3, s. 7. See M. L.
R. P. 275; Lewin on Trusts, 53, 67.

(*t*) Blackburn on Sale, Intro. ix.

Executory—
executed, or
bargain and
sale.

Chap. I.

the rights nor the liabilities of the proprietor; so that he has no preferable right to the goods themselves, nor any means of enforcing his demand against them more than any other creditor, and, on the other hand, he is not liable to any loss arising from the destruction or injury of the goods.

“Such agreements are generally called ‘Executory agreements.’

“Or it may be an agreement amounting to a bargain and sale of the goods, transferring to the purchaser the general property in the goods, and with it the rights and liabilities attached to property, so that the purchaser has a specific interest in the goods themselves, of which he may avail himself, independently of his remedy against the vendor on the contract, and on the other hand, making him liable to the general risk of any loss befalling the goods. Such an agreement is sometimes called an ‘executed’ sale, but it is more technically called ‘a bargain and sale’ of the goods.”

The ‘bargain and sale’ operates as a conveyance, the property passes, and real rights (*jura in rem*) are created; the purchaser becomes the owner of the goods themselves, and, if they are lost or destroyed, he is the sufferer. But when the agreement is such that on the happening of a future event or the accomplishment of certain conditions only the property will pass, up to the happening of the event or the accomplishment of the conditions personal obligations (*in personam*) only are created (*u*); for instance, where the goods are not ascertained or may not exist at the time of the contract, from the nature of the transaction no property in the goods can pass to the purchaser by virtue of the contract itself (*x*).

Statute of
Frauds, s. 17.

By the Statute of Frauds (*y*) it was enacted :—

(*u*) Blackburn on Sale, 174, 244; v. *Hickson*, L. R. 7 C. P. 449 *et seq.*
 Benjamin on Sale, 4, 260. (*y*) 29 Car. II. c. 3.
 (*x*) See *per* Bovill, C.J., in *Heilbutt*

S. 17. "That from and after the said four-and-twentieth day of June (A.D. 1677), no contract for the sale of any goods, wares, or merchandizes, for the price of £10 or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised."

The effect of the statute is to make the prescribed evidence of the contract, where the statute applies, indispensable. Lord Blackburn says (z):—

"I think it is now finally settled that the true construction of the Statute of Frauds, both the 4th and 17th sections, is not to render the contracts within them void, still less illegal, but is to render the kind of evidence required indispensable when it is sought to enforce the contract."

Thus the memorandum spoken of may be made at any time after the contract, if before action commenced to enforce it; and any number of memoranda may be made, all being equally originals (a).

A question having arisen whether the statute applied to contracts for the sale of goods not at the time capable of being delivered, Lord Tenterden's Act (b) in 1828 enacted:—

S. 7. "That the said enactment (*i.e.*, the Statute of Frauds) shall extend to all contracts for the sale of goods of the value of £10 and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time

(z) *Maddison v. Alderson*, L. R. 8 v. *Archibald*, 17 Q. B. 107.
Ap. Ca. 488. (b) 9 Geo. IV. c. 14, s. 7.

(a) See *per Erle, J.*, in *Sicvebright*

Chap. I.

of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

Application
of statutes.

The two statutes, which must be read together, apply to all contracts for the sale of goods, that is, all tangible movable property, to the value of £10 or upwards. Therefore where a mare and foal with eatage for the same were sold for £30 and it was admitted that the principal subject-matter of the contract was the sale of the mare and foal, it was held to be a contract for the sale of goods above the value of £10; and therefore the evidence of it prescribed by statute was requisite; for the Court might look *dehors* the contract for the purpose of ascertaining the value (c).

Fixtures—
emblemments.

The statutes may be applicable to contracts for the sale of fixtures and of emblemments (d). Says Lord Blackburn (e):—

"It seems pretty plain, upon principle, that an agreement to transfer the property in something that is attached to the soil at the time of the agreement, but which is to be severed from the soil and converted into goods before the property is to be transferred, is an agreement for the sale of goods within the meaning of 9 Geo. IV. c. 14, if not of the 29 Car. II. c. 3. The agreement is, that the thing shall be rendered into goods and then in that state sold; it is an executory agreement for the sale of goods, not existing in that capacity at the time of the contract. And when the agreement is, that the property is to be transferred before the thing is severed, it seems clear enough, that it is *not* a contract for the sale of goods; it is a contract for a sale, but the thing to be sold is not goods. If this be the principle, the true subject of inquiry in each case is, when do the parties intend that the property is

(c) *Harman v. Reeve*, 18 C. B. 587.

(d) See M. L. R. P. 10, 11.

(e) *Blackburn on Sale*, 5.

to pass: if the things perish by inevitable accident before the severance, whom do they mean to bear the loss? for in general that is a good test of whether they intend the property to pass or not; in other words, if the contract be for the sale of the things after they have been severed from the land so as to become the subject of larceny at common law, it is, at least, since the 9 Geo. IV. c. 14, a contract for the sale of goods, wares, and merchandizes, within the 17th section of the Statute of Frauds. If the contract be for the sale of the things whilst they are attached to the soil and not the subject of larceny at common law, it is a contract for the sale of things, crops, fixtures, emblements, trees or minerals, which may or may not be an interest in land within the 4th section of the statute, but are not goods, wares, and merchandizes within the 17th section."

Thus, it has been held that a contract for the sale of growing trees "to be got away as soon as possible" was a contract for the sale of goods within the 17th section of the Statute of Frauds (*f*). The following tests have been given as to whether a contract for the sale of things affixed to or growing on the land is within that section, or within the 4th section of the same statute as being an interest in or concerning land (*g*):—

"Where the subject-matter of the contract is growing in the land at the time of the sale, then if by the contract the thing sold is to be delivered at once by the seller the case is not within the 17th section. Another case is where, although the thing may have to remain in the ground some time, it is to be delivered by the seller finally, and the purchaser is to have nothing to do with it until it is severed, and that case also is not within the section. Then there comes the class of cases where the purchaser is to take the thing away himself. In such a case, where the things are *fructus industriales*, then, although they are still to derive benefit from the land after the sale in order to become fit for delivery,

(*f*) *Marshall v. Green*, L. R. 1 C. P. D. 35.

(*g*) See M. L. R. P. 287.

Chap. I.

nevertheless, it is merely a sale of goods, and not within the section. If they are not *fructus industriales*, then the question seems to be whether it can be gathered from the contract that they are intended to remain in the land for the advantage of the purchaser, and are to derive benefit from so remaining; then part of the subject-matter of the contract is the interest in land, and the case is within the section. But if the thing, not being *fructus industriales*, is to be delivered immediately, whether the seller is to deliver it or the buyer is to enter and take it himself, then the buyer is to derive no benefit from the land, and consequently the contract is not for an interest in the land, but relates solely to the thing sold itself" (h).

Alternative
proofs of
contract.

On reference to the statute it will be observed there are three ways in which the contract may be evidenced.

1. Acceptance
and receipt of
part.

The first alternative is that "the buyer shall accept part of the goods so sold and actually receive the same." That is to say, there must be an assent by the buyer that such part is to be taken by him as his property, and there must be a taking possession of it by the buyer. His intention to accept will be signified by his outward acts: receipt by him of the goods may be evidence of such intention, but it is not acceptance. For instance, on delivery to a carrier there may be receipt by the buyer but hardly acceptance, for a carrier although an agent to receive goods is not an agent to accept them: again, receipt would not be acceptance so long as the buyer can refuse the goods as not answering to the order (i).

Although there has been no actual removal by the buyer, where anything has been done by him to part of the goods indicating an intention to deal with it as owner in possession, that amounts to an acceptance or receipt within the statute.

(h) Wms. Saunders, 395, quoted in *Marshall v. Green*, L. R. 1 C. P. D. 42.

(i) See Blackburn on Sale, pt. i., ch. 2.

Thus, where there had been a verbal agreement for the sale of growing trees to be taken away as soon as possible, and the buyer cut some of the trees and agreed to sell the tops and clumps to a third person, it was held there was a good acceptance and receipt (*k*). Brett, J., said :—

“ If the sub-sale had stood alone, I should have doubted whether it would have been evidence of an actual receipt ; but here he did something to the trees themselves. I should be inclined to say that where there is no actual removal of the thing sold depends on this proposition, viz., that when there has been, during the existence of the verbal contract, for however short a time, an actual possession of the things sold, and something has been actually done to the things themselves by the buyer which could only properly be done by an absolute owner, there is evidence to go to a jury of an actual receipt of the things. This principle will, I think, be found to be the governing principle in all the decided cases. Thus, for instance, where goods were handed over the counter to the purchaser and marked by him ; where casks, though not taken away, have had their spigots cut off by the purchaser ; and in other similar cases, there has been an actual possession by the buyer and something actually done to the goods themselves by him which could only properly be done by an absolute owner. Here, by cutting down the trees, the defendant actually did something to them which, apart from the sale over of the toppings, amounted in my opinion to an actual receipt of them. That being so, the words of the 17th section seem to me to have been satisfied.”

The second alternative is that “the buyer shall give something in earnest to bind the bargain or in part payment.” There must be an actual transfer of what is given as earnest or part payment, although it may take place at or subsequent to the making of the contract. Thus, an agreement to sell goods at a certain price, and then or

2. Earnest
or part
payment.

(*k*) *Marshall v. Green*, L. R. 1 C. P. D. 43.

Chap. I. subsequently an agreement that a sum due from the vendor to the buyer should be wiped off from the amount of that price, would be an equivalent to part payment; as an agreement to set off one item against another is equivalent to part payment of money. But a stipulation that a debt due by the buyer to the vendor should go in part payment of the price of the goods, is merely a portion of the contract, and is not a giving something to the vendor by way of earnest or in part payment, then or subsequently; there must be two things, first, a contract, and next something given as earnest or in part payment or discharge of the buyer's liability (*l*).

3. Note or memorandum in writing.

The third alternative is that "some note or memorandum in writing of the said bargain be made, and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised."

Need not be in one document.

It has long been established that the terms of the bargain need not all appear on one document, but may be made out from several documents; for instance, where a note in writing exists which binds one party, any subsequent note in writing, signed by the other, is sufficient to bind him, provided it either contains in itself the terms of the contract, or refers to any writing which contains them (*m*). Where there are several documents they must all be connected together by internal evidence; parol evidence of the intention of the parties that they should be connected cannot be given, for then the note or memorandum would consist partly of the contents of the documents and partly of the

(*l*) *Walker v. Nussey*, 16 M. & W. 302.

(*m*) *Per Lord Denman, C.J., in Dobell v. Hutchinson*, 3 Ad. & Ell. 371.

See *Cave v. Hastings*, L. R. 7 Q. B. D. 125; *Hussey v. Horne-Payne*, 4 Ap. Ca. 311.

evidence of the intention of the parties which is not in writing (*n*). And although there be not sufficient reference in one document to the other to connect them, yet if they both refer to the same parol contract, all the terms of which are contained in one or other of them, they can be read together, and will together constitute a good memorandum within the statute (*nn*).

The note or memorandum may be a note passing between the party to be charged and his own agent, and not between the one contracting party and the other; for instance, a letter signed by the party to be charged to his own agent, referring to letters of such agent which stated the terms upon which the latter had made a contract on his behalf with the other party for the purchase of goods (*o*).

Even a letter written to repudiate the contract which states and admits the terms may constitute the very note or memorandum, and bind the writer. Thus, where in answer to an application for payment for goods the buyer wrote:—“The only parcel of goods selected for ready money was the chimney-glasses, amounting to £38 10s. 6*d.*, which goods I have never received, and have long since declined to have, for reasons made known to you at the time,”—it was held that he had satisfied the statute and afforded good evidence against himself of the contract (*p*). A purchaser having signed a memorandum and given it to the vendor who had not signed, subsequently wrote to the latter requesting that he might see a copy of the contract. The vendor replied by letter enclosing copy and saying:—“In order to show that my construction of the contract is

(*n*) Blackburn on Sale, 44.

(*o*) *Gibson v. Holland*, L. R. 1 C. P. 1.

(*nn*) *Studds v. Watson*, L. R. 28 Ch. D. 305. And see *Wylson v. Dunn*,

(*p*) *Barley v. Sweeting*, 9 C. B. N. S. 843.

34 Ch. D. 569.

Chap. I.

the correct one, I forward you a copy of its terms." By his admission, although accompanied by a repudiation of the obligation to perform the contract, he afforded the buyer such statutory evidence of it as enabled him to sue and recover upon it (*q*). In both cases, it will be observed, the objection was not to the statement of the contract, but to what had taken place in the performance of it (*r*).

Contents.

The note or memorandum is to be of the 'bargain,' that is, of the terms upon which the parties contract (*s*); it must be a note or memorandum of a complete and concluded agreement (*t*); therefore it must contain the subject-matter (*u*), and the consideration, either in express words or arising by necessary implication, must appear on the face of the writing (*x*). If a specific price has been agreed upon, it must be expressed (*y*); but, if there has been no agreement as to price or value, the term will be implied that the price to be paid for the goods was what they were reasonably worth (*z*). Thus the following was a sufficient note or memorandum:—

"Sir Archibald M'Laine orders Mr. Hoadley to build a new, fashionable, and handsome landaulet, with the following appointments;"—(here followed a minute detail of various small matters, to which the proprietors of such vehicles attach importance);—"the whole to be ready by the 1st March, 1833."

(*q*) *Buxton v. Rust*, L. R. 7 Ex. 1, 279.

(*r*) See *per* Erle, C.J., in *Wilkinson v. Evans*, L. R. 1 C. P. 410.

(*s*) *Kenworthy v. Schofield*, 2 B. & C. 947, *per* Bayley, J.

(*t*) *Hussey v. Horne Payne*, L. R. 4 Ap. Ca. 311.

(*u*) *Blackburn on Sale*, 50, 56; *Benjamin on Sale*, 211.

(*x*) In accordance with the decision in *Wain v. Warlters*, 5 East, 10, upon

the fourth section. By the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97, s. 3), it has been enacted that the consideration for a guaranty, that is, to answer for the debt, default or miscarriage of another person, need not appear. See *post*, ch. xi.

(*y*) *Goodman v. Griffiths*, 1 H. & N. 574.

(*z*) *Hoadley v. M'Laine*, 10 Bing. 482.

Said Tindal, C.J. :—

“It is clear that a contract for the sale of a commodity, in which the price is left uncertain, is, in law, a contract for what the goods shall be found to be reasonably worth. This is no new doctrine, for in Blackstone’s Commentaries, b. 2, c. 30, it is laid down, that ‘*express* contracts are where the terms of the agreement are openly uttered and avowed at the time of the making, as to deliver an ox, or ten load of timber, or to pay a stated price for certain goods; *implied*, are such as reason and justice dictate, and which, therefore, the law presumes that every man undertakes to perform :—As, if I take up wares from a tradesman, without any agreement of price, the law concludes that I contracted to pay their real value.’—‘A contract for any *valuable* consideration, as for marriage, for money, for work done, or for other reciprocal contracts, can never be impeached at law.’—‘These valuable considerations are divided by the civilians into four species. The third species of consideration is, *facio, ut des*, when a man agrees to perform anything for a price, either specifically mentioned, or left to the determination of the law to set a value on it.’

“What is implied by law is as strong to bind the parties as if it were under their hand. This is a contract in which the parties are silent as to price, and therefore leave it to the law to ascertain what the commodity contracted for is reasonably worth.

“It has been contended, that this would open a door for perjury, and let in the mischief which the Statute of Frauds proposes to exclude. But I cannot agree in that proposition; for it does not appear that any specific price was agreed on; and if it had appeared that such was the case, this note would not have been evidence of such a bargain” (a).

The note or memorandum must sufficiently identify the parties to the contract, although it need not name them. In a case under the 4th section of the statute (b), where

(a) *Hoadley v. McLaine*, 10 Bing. 482.

(b) The corresponding words of that section are, “unless the agreement upon which such action shall be

brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.”

Chap. I.

the memorandum referred only to 'the proprietors,' the principle was thus expressed by L. Cairns, L.C. :—

"I am sure your lordships have frequently seen conditions of sale, not merely by auction but by private contract, in which it is stated that the sale is made, sometimes by the owners, and sometimes by the mortgagees, and a form of contract is annexed in which an agent signs for the vendors, and no other specification upon the vendors' part is inserted, and I never heard up to this time that a contract under those circumstances was invalid. In point of fact, my lords, the question is,—Is there that certainty which is described in the legal maxim *id certum est quod certum reddi potest*? If I enter into a contract on behalf of my client, on behalf of my principal, on behalf of my friend, on behalf of those whom it may concern, in all those cases there is no such statement, and I apprehend that in none of those cases would the note satisfy the requirements of the Statute of Frauds" (c).

Agents.

It may be shown that either or both of the contracting parties named were agents for other persons and acted as such in making the contract, so as to give the benefit of the contract on the one hand to, and charge with liability on the other, the unnamed principals; but not so as to discharge the agent, although the other party knew at the time that he was only an agent (d). Said Parke, B. :—

"This evidence in no way contradicts the written agreement. It does not deny that it is binding on those whom, on the face of it, it purports to bind; but shows that it also binds another, by reason that the act of the agent, in signing the agreement, in pursuance of his authority, is in law the act of the principal" (e).

But in the case of a commission agent acting for a

(c) *Rossiter v. Miller*, L. R. 3 Ap. Ca. 1140. See *Jarrett v. Hunter*, 34 Ch. D. 182.

(d) See vol. ii. Sm. L. Ca., notes to

Thomson v. Davenport, pp. 390 et seq.

(e) *Higgins v. Senior*, 8 M. & W. 844.

foreign undisclosed principal, unless express authority to pledge his credit be shown, the latter cannot sue or be sued upon the contract, for the reasons thus stated by Blackburn, J. :—

“The great inconvenience that would result if there were privity of contract established between the foreign constituents of a commission merchant and the home suppliers of the goods has led to a course of business, in consequence of which it has been long settled that a foreign constituent does not give the commission merchant any authority to pledge his credit to those from whom the commissioner buys them by his order and on his account. It is true that this was originally (and in strictness perhaps still is) a question of fact; but the inconvenience of holding that privity of contract was established between a Liverpool merchant and the grower of every bale of cotton which is forwarded to him in consequence of his order given to a commission merchant at New Orleans, or between a New York merchant and the supplier of every bale of goods purchased in consequence of an order to a London commission merchant, is so obvious and so well-known, that we are justified in treating it as a matter of law, and saying that, in the absence of evidence of an express authority to that effect, the commission agent cannot pledge his foreign constituent's credit. Where the constituent is resident in England, the inconvenience is not so great, and we think that, *prima facie*, the authority is given, unless there is enough to show that it was not, in fact, given” (*f*).

The note or memorandum need not be signed by both parties; it is sufficient for the chargeability of one party that it should have been signed by him and assented to by the other by parol (*g*). Therefore the contract is good or not at the election of the party who has not signed (*h*). Signature.

(*f*) *Armstrong v. Stokes*, L. R. 7 Q. B. 605. See in connection with this case, *Irvine v. Watson*, 5 Q. B. D. 414.

(*g*) *Buxton v. Rust*, L. R. 7 Ex. 280; *Reuss v. Picksley*, 1 Ex. 342.
(*h*) *Benjamin on Sale*, 219.

Chap. I.

The signature need not be in writing, or at the foot or end of the note or memorandum: it is often contained in a printed billhead. It is not a subscribing that the statute requires; but the signature must show that every part of the instrument emanates from the individual signing, in other words, that it relates and refers to every part of the instrument (*i*). If intended as a signature, initials will suffice (*k*). It may be contained in a telegram (*l*). The authority to an agent to sign need not be in writing.

The agent 'lawfully authorised' to sign need not have his authority at the time the contract is entered into; a subsequent sanction is considered the same thing in effect as assent at the time (*m*).

On the other hand, where the contract is signed by one who professes to be signing as agent, but who has no principal existing at the time, and the contract would be altogether inoperative unless binding upon the person who signed it, he is bound thereby: and a stranger cannot by a subsequent ratification relieve him from that responsibility (*n*). Thus where B. C. and D. signed "on behalf of the Gravesend Royal Alexandra Hotel Company, Limited," and the company was incorporated subsequently and failed, B. C. & D. were held liable for the price of the goods which they had agreed to purchase for the company (*o*).

One of the parties cannot be the agent of the other for the purpose of signing the note or memorandum (*p*). But an auctioneer at a public sale is by general custom an

(*i*) See *per* Lord Westbury in *Caton v. Caton*, L. R. 2 E. & I. Ap. 142.

(*k*) *Ib.* 143; see Benjamin on Sale, 221.

(*l*) *Godwin v. Francis*, L. R. 5 C. P. 295.

(*m*) *Maclean v. Dunn*, 4 Bing. 727,

per Best, C.J.

(*n*) *Per* Erle, C.J., *Kelner v. Baxter*, L. R. 2 C. P. 183.

(*o*) *Ib.* 174.

(*p*) *Sharman v. Brandt*, L. R. 6 Q. B. 720.

agent for both parties to sign; not so his clerk, unless specially authorised, for instance, by word or sign from the bidder, to sign for him (*q*).

A broker, that is, one who buys and sells goods for others on a commission, is an agent to sign both for seller and purchaser. When he has made a contract he reduces it to writing and delivers to each party a copy of the terms signed by himself; he also ought to enter them in his book and sign the entry. What he delivers to the seller is called the 'sold note': to the buyer the 'bought note.' The sold note will bind the buyer, and *vice versa* the bought note the seller: also the entry in the broker's book is a memorandum or note of the bargain signed by a duly authorised agent (*r*).

Hitherto reference has been made only to the prescribed evidence of a contract falling within the 17th section of the Statute of Frauds (*s*) extended by Lord Tenterden's Act (*t*), that is to say, one relating to the sale of goods of the value of £10 and upwards. As an executory contract is included in this, the operation of the following provision of the 4th section of the statute must be very limited in regard to the sale of goods:—

Contracts not to be performed within one year.

S. 4. "No action shall be brought . . . (5thly), upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorised."

(*q*) *Peirce v. Corf*, L. R. 9 Q. B. 214, 236 *et seq.*; and Blackburn on Sale, *per* Blackburn, J. pt. i., ch. 5.

(*r*) *Thompson v. Gardner*, L. R. 1 C. P. D. 777. And see Benjamin on Sale, (*s*) 29 Car. II. c. 3.

(*t*) 9 Geo. IV. c. 14, s. 7.

Chap. I.

Where the agreement distinctly shows, upon the face of it, that the parties contemplated its performance to extend over a greater space of time than one year, the case is within the statute; but, where the contract is such that the whole *may* be performed within a year, and there is no express stipulation to the contrary, the statute does not apply (*u*). Also it applies only to contracts not to be performed on either side within the year (*x*). It does not apply where the consideration is executed (*y*).

Pleading.

It remains to be added that, where in an action in the High Court it is intended by either party to rely upon the Statute of Frauds in answer to a claim, he must raise such matter by his pleading (*z*).

(*u*) *Per* Tindal, C.J., in *Souch v. Strawbridge*, 2 C. B. 815.

(*x*) *Cherry v. Heming*, 4 Ex. 631.

(*y*) *Knowlman v. Bluett*, L. R. 9 Ex. 307.

(*z*) R. S. C. 1883, Ord. XIX. r. 15.

CHAPTER II.

Chap. II.CHOSSES IN POSSESSION (*continued*).

WHERE a contract is in writing, whether required so to be by the Statute of Frauds or not, it is a general rule that, except for the purpose of impeaching it on the ground of fraud or mistake, parol evidence cannot be received to contradict, vary, add to, or subtract from its terms. But, where the terms themselves need explanation, such evidence may be given. Also in the case of mercantile contracts it is allowed thus to supply terms of known usage, or, as it is called, to 'annex incidents,' upon the principle that the contract was framed with reference to the usage (*a*). But, where the usage set up is not such as regulates the mode of performing the contract but changes its intrinsic character, for instance, where its effect is to change the character of a broker, who is an agent to buy for his employer, into that of a principal to sell to him, it will not be binding on a person who is ignorant of its existence, by reason merely of his employing a broker to buy for him in the market where the custom prevails (*b*). As to the proper measure or limit of the control of mercantile customs by the law Lord Esher has said (*c*):—

I. Evidence to contradict, &c., written contracts. Mercantile customs.

“That the course of mercantile business should be left to be as free as possible seems to me to be beyond doubt. That it is subject to some control is equally undoubted. It is when

(*a*) See Goodeve on Evidence, ch. xiii.

(*b*) *Robinson v. Mollett*, L. R. 7 E. & I. Ap. 802.

(*c*) *Ib.* 816.

Chap. II. merchants dispute about their own rules that they invoke the law. The Courts, therefore, being appealed to, have been obliged to apply some rule. When merchants have disputed as to what the governing rule should be, the Courts have applied to the mercantile business brought before them what have been called legal principles, which have almost always been the fundamental ethical rules of right and wrong. They have decided in favour of that course of business which was in accordance with such principles or rules, and against that course which was inconsistent with them. Thus, for example, when shipowners and underwriters disputed upon the effect of concealment of certain facts, the Courts, finding that the contract of maritime insurance must be one of confidence, because the knowledge of many material facts must of necessity be confined to the shipowner, applied the principle of *uberrima fides*, and laid down the rule that, if a material fact known to the assured and unknown to the underwriter be not communicated to the latter at the time of the making of the contract, it shall be ineffective. But when once rules are laid down, they must at some time become irksome to some individual or to some body of men. And there must from time to time be some contention raised, or some course of business invented, which is alleged to be an attempt to break through them. The Courts are then again appealed to. Customs of trade, as distinguished from other customs, are generally courses of business invented or relied upon in order to modify or evade some application which has been laid down by the Courts, of some rule of law to business, and which application has seemed irksome to some merchants. And when some such course of business is proved to exist in fact, and the binding effect of it is disputed, the question of law seems to be, whether it is in accordance with fundamental principles of right and wrong. A mercantile custom is hardly ever invoked, but when one of the parties to the dispute has not, in fact, had his attention called to the course of business to be enforced by it; for if his attention had in fact been called to such course of business, his contract would be specifically made in accordance with it, and no proof of it as a custom would be necessary. A stranger to a locality, or trade, or market, is not held to be bound by the custom of such locality, trade or market, because he knows the custom, but because he has elected to enter into transactions in a locality,

Chap. II.

trade, or market, wherein all who are not strangers do know and act upon such custom. When considerable numbers of men of business carry on one side of a particular business, they are apt to set up a custom which acts very much in favour of their side of the business. So long as they do not infringe some fundamental principle of right and wrong, they may establish such a custom; but if, on dispute before a legal *forum*, it is found that they are endeavouring to enforce some rule of conduct which is so entirely in favour of their side that it is fundamentally unjust to the other side, the Courts have always determined that such a custom, if sought to be enforced against a person in fact ignorant of it, is unreasonable, contrary to law, and void."

It has been said (*d*) that, although the goods be not delivered, the bargain and sale operates as a conveyance and the purchaser becomes the owner of the goods; but where they have not been paid for, the property in them passes to the purchaser subject to the unpaid vendor's rights. The purchaser having the property in the goods has a *prima facie* right to the possession of them, for it is a rule of law that 'the property of personal chattels draws to it the possession.' But the right to possession may be made subject to condition by the terms of the agreement.

Rights of
unpaid
vendor.

Where goods are sold and nothing is said as to the time of delivery, or the time of payment, the seller is liable to deliver them whenever they are demanded, upon payment of the price; but the buyer has no right to have possession of the goods till he pays the price. If, on the other hand, goods are sold upon credit, and nothing is agreed upon as to the time of delivering them, the vendee is immediately entitled to the possession, and the right of possession and the right of property vest at once in him; but his right of possession then is not absolute, it is liable to be defeated if

(*d*) *Ante*, p. 14.

Chap. II.

Stoppage *in transitu*.

he becomes insolvent before he obtains possession. If the seller has despatched the goods, and insolvency occurs, he has a right by virtue of his original ownership to intercept them in their way, or 'stop them *in transitu*' as it is called, that is, before they get into the actual or constructive possession of the vendee, or of those who stand in his place. *A fortiori*, if insolvency occurs before despatch of the goods, the vendor may in such case retain them (e). In the latter case the vendor is said to have *at least* a lien for the unpaid price, that is, a right of retaining the goods until payment of the price (f); but neither in that case nor in the former is the contract rescinded (g). The extent of the unpaid vendor's right has not been defined. Says Lord Blackburn (h):—

"The decided cases seem to establish that in all three positions the right exceeds a mere lien, (which would only entitle the vendor to retain the goods until he had been paid for them, and would not enable him to confer any title on a third person, either by way of sale or pledge,) that is to say, the vendor's right interferes not only with the purchaser's right of possession, but also with his right of property; but that the vendor's right does not in any one of the cases amount to a right to resume a complete right of property, so as to divest totally the purchaser's right of property; or in other words, that the vendor cannot treat the contract of sale as rescinded so as to resume his property as if the sale had never been made.

"The precise extent of the vendor's right between those limits is very much a matter of conjecture."

* * * * *

"At present the decisions do not seem to authorise a more

(e) See *per* Bayley, J., in *Bloxam v. Saunders*, 4 B. & C. 948; and *Ex parte Chalmers*, L. R. 8 Ch. Ap. 289. See also *Lickbarrow v. Mason*, 1 Sm. L. Ca. 753; and Blackburn on Sale, pt. iii. ch. 1.

(f) Benjamin on Sale, 745, 782.

(g) See *per* Cairns, L.J., in *Schotsmans v. Lancashire, &c., Rail. Co.*, L. R. 2 Ch. Ap. 340.

(h) Blackburn on Sale, 445, 446.

definite statement of the law, than that a default on the part of the purchaser does not authorise the vendor to consider the contract rescinded; and that a resale by the vendor, whilst the purchaser is in default, does not entitle the purchaser to recover more than the damage he may sustain by such a resale.” Chap. II.

When goods are despatched on board a ship the master gives a ‘bill of lading,’ the effect of which is an undertaking to deliver them at the end of the voyage to a person named therein or his assigns. The indorsement and delivery of a bill of lading transfers the property from the vendor to the vendee, and if the latter assign the bill of lading to a third person for a valuable consideration, the right of the former to stop the goods *in transitu* as against such assignee is defeated (*k*). By the common law, although a right of stoppage was thus defeated, the transfer did not operate as an assignment of the contract, and therefore no right was conferred on the assignee to sue upon the contract expressed by the bill of lading (*l*). This, however, was altered by the Bills of Lading Act, 1855 (*m*), by which after reciting that:—

Documents
of title—bills
of lading, &c.

“By the custom of merchants a bill of lading of goods being transferable by indorsement the property in the goods may thereby pass to the indorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property.”

it was enacted:—

S. 1. “Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom

(*k*) *Lickbarrow v. Mason*, 2 T. R. Sale, 856.
653; 1 Sm. L. Ca. 753. (*m*) 18 & 19 Vict. c. 111.
(*l*) 1 Sm. L. Ca. 828; Benjamin on

Chap. II.

the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself."

The above exception to the vendor's right of stoppage *in transitu* was extended to holders in like manner of other documents of title to goods (as dock warrants, &c.) by the Factors' Act, 1877 (n). It is thereby enacted:—

S. 5. "Where any document of title to goods has been lawfully indorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery where the document is by custom, or by its express terms transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same *bonâ fide* and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*."

Although the indorsement and delivery of the bill of lading by the consignee to a third person for valuable consideration will give such third person the legal right to the delivery and possession of the goods; yet, if the consideration was not the purchase, but an advance upon the value, of the goods, in equity the transfer would take effect only to the extent of the consideration paid by the transferee, leaving to the consignor an interest in the surplus value in respect of which he might stop the

(n) 40 & 41 Vict. c. 39.

goods *in transitu* subject to the transferee's lien for the advance (o). Chap. II.

When the vendor fails to deliver specific goods in which the property has passed, or they are not according to warranty, the buyer has a right of action at law for damages for breach of the contract; and formerly in equity, when he could show that damages were not an adequate compensation, he could obtain specific performance of the contract (p). By the Mercantile Law Amendment Act, 1856 (q), discretion was given to the Court in an action at law to order execution to issue for the delivery of the goods.

Vendor in default.

On the other hand, when the goods were not specific at the time of sale, the buyer may also reject the goods when not as contracted for. As expressed by the learned editors of Smith's Leading Cases (r):—

“A warranty properly so called, can only exist where the subject-matter of the sale is ascertained and existing, so as to be capable of being inspected at the time of the contract, and is a collateral engagement that the specific thing so sold possesses certain qualities; but the property passing by the contract of sale, a breach of the warranty cannot entitle the vendee to rescind the contract, and revest the property in the vendor without his consent.

* * * * *

“But where the subject-matter of the sale is not in existence or not ascertained at the time of the contract, an engagement that it shall, when existing or ascertained, possess certain qualities, is not a mere warranty but a condition, the performance of which is precedent to any obligation upon the vendee under the contract, because the existence of those qualities being

(o) *Spalding v. Ruding*, 6 Bea. 376.
See *Kemp v. Falk*, L. R. 7 Ap. Ca. 573; *Ex parte Golding Davis & Co.*, 13 Ch. D. 628.

(p) Notes to *Cuddee v. Rutter*, 1 W. & T. L. Ca. in Eq. 912.

(q) 19 & 20 Vict. c. 97, s. 2.

(r) 2 *Smith's L. Ca.* 30.

Chap. II. part of the description of the thing sold, becomes essential to its identity, and the vendee cannot be obliged to receive and pay for a thing different from that for which he contracted."

In such latter case the buyer may reject the goods as not in accordance with the contract, *e.g.* not according to sample, although there have been acceptance and receipt of part within the meaning of the Statute of Frauds (*s*); and he is not bound to send them back to the vendor (*t*); it is sufficient if he does any equivalent showing that he rejects them, for instance, if he intimates to the vendor that they are not according to contract and he will not have them (*u*).

Warranty.

Such warranty as has been spoken of must, in accordance with the rule previously referred to (*x*), be in writing where the contract is itself in writing (*y*); but a warranty of title by the vendor to what he sells may arise by implication. In regard to the latter Mr. Benjamin says (*z*):—

"Inasmuch as it is an essential element of the contract of sale that there should be a transfer of the absolute or general property in the thing from the seller to the buyer, it would seem naturally to follow that by the very act of selling the chattel, the vendor undertakes to transfer the property in the thing, and thus warrants his title or ability to sell, and it is believed that such is the true rule of law."

II. Parties to contract.

To the validity of a contract it is essential that the parties to it should have such freedom of will, combined with such degree of reason and judgment, as can alone enable them to give the assent which is necessary to constitute a valid engagement (*a*). Accordingly, at common law certain persons were generally incompetent to render themselves

(*s*) *Morton v. Tibbett*, 15 Q. B. 428.

(*t*) *Grimoldby v. Wells*, L. R. 10 C. P. 391.

(*u*) *Ib.*; see *per* Brett, J.

(*x*) *Ante*, p. 29.

(*y*) See Benjamin on Sale, 615.

(*z*) *Ib.* 606; and see pp. 619 *et seq.*

(*a*) Benjamin on Sale, 22.

liable by a contract, namely, infants, married women and Chap. II.
non compotes mentis (including drunkards).

Certain contracts of infants which formerly were voidable Infants.
 only, and might be ratified at or after full age, are now by
 the Infants Relief Act, 1874 (*b*), rendered void and not to
 be ratified. It is enacted:—

S. 1. “All contracts whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void. Provided always, that this enactment shall not invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable.

S. 2. “No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.”

The words of the first section are perfectly general, and apply to trade as well as other debts; the exceptions relate only to necessities for which alone an infant could contract a debt at law, and to a rule in equity making his estate liable on bankruptcy occurring after attaining his majority, where credit had been obtained by an express misrepresentation by him as to his age. The rule was thus referred to by Jessel, M.R. (*c*):—

“If persons choose to supply goods to an infant on credit, they take the chance of being paid. Such is the law, and I am not

(*b*) 37 & 38 Vict. c. 62.

(*c*) *Ex parte Jones, In re Jones*, L. R. 18 Ch. D. 120.

Chap. II.

prepared to say that there is any absurdity or hardship in it, or that it ought to be altered. That is not my province. It is said, however, that a different rule prevails in equity, and that when an infant has committed a fraud by representing that he is not an infant in order to obtain possession of goods, he can be made liable in equity for the misrepresentation. In such cases the Court has taken into consideration the appearance of the infant, for that is a very material matter. If the representation were made by a boy of ten years old, it would be impossible that the person to whom it was made could have relied on it. But if a man who is apparently of full age, represents that he is of full age, the person to whom he makes the representation may well be deceived by it. An infant is capable of committing a fraud in equity just as he is capable of committing a crime, and may be made liable for it. But the authorities show that there must be an express representation and one which would naturally deceive the person to whom it is made. In such a case it has been decided that, if the person who has committed the fraud becomes a bankrupt after he is of full age, the person who has been defrauded can prove in the bankruptcy for the amount of the equitable liability resulting from the fraud But this liability is not really a debt at all, it is only a liability in equity to pay a sum of money, and whenever a debt is required by law in order to found any proceedings, this equitable liability will not be enough."

The earliest definition of 'necessaries' is that given by Lord Coke, which is as follows (*d*):—

"His necessary meat, drink, apparel, necessary physic, and such other necessaries, and likewise for his good teaching or instruction whereby he may profit himself afterwards."

The principle still remains the same; the present rule was thus stated recently by Lopes, J. (*e*):—

(*d*) Co. Litt. 172 *a*, ed. by Thomas, vol. i., 175.

D. 413; *contra*, *Ryder v. Wombwell*, L. R. 3 Ex. 90.

(*e*) *Barnes v. Toye*, L. R. 13 Q. B.

“A contract by an infant for the supply of goods to him cannot be enforced unless the articles be necessaries, the policy of the law being directed to the protection of infants. In point of fact, a tradesman dealing on credit with an infant does so at his peril, and must lose his money (that is, if the infant does not voluntarily pay him) unless he can prove that the goods supplied were necessaries for the infant according to his station in life. That being the law, we come to the question what are necessaries? To determine this, we must take into account what the infant had at the time of giving the order. For example, a watch may be *primâ facie* in some cases a necessary, but if it turned out that the infant was already supplied with a watch or watches, the one ordered could not be a necessary. It is said, however, that, even if regard must be had to the supply which the infant has at the time of the order, where it is in the tradesman's knowledge that the infant is amply supplied; yet this is not so if the tradesman is ignorant of that fact. If this contention were correct, the protection given to the infant would depend entirely on what might be the state of knowledge of the tradesman, and one effect would be to deprive the infant of the protection intended to be extended to him by the law. In my view it is immaterial whether the plaintiffs did or did not know of the existing supply, just as it is immaterial whether they did or did not know that the defendant was a minor. In this particular case evidence as to the amount of clothes the defendant possessed at the time when the order relied on was given was admissible, and the jury should have been told that in arriving at a conclusion whether the goods supplied by the plaintiffs were necessaries or not, they should consider whether the defendant was already sufficiently supplied.”

It will be observed that the Act does not apply to a sale by an infant; so that still in such case his contract will be voidable only, or he may adopt and enforce it after attaining full age, although he is protected from an action by the purchaser. Nor does it interfere with his right to sue on a contract in part executed by him, and which is for his benefit; otherwise after part payment he might lose the

Chap. II.

benefit of such payment, and the law is for the protection of the infant and not of the party with whom he contracts (*f*).

Great inconveniences and disadvantages having been found to arise in consequence of persons marrying during minority being incapable of making binding settlements of their property, in 1855 the statute, 18 & 19 Vict. c. 43, was passed to enable males over the age of twenty and females over the age of seventeen (*g*), before or after marriage to settle their property, real or personal, with the sanction of the Court of Chancery to be obtained upon petition. Apart from the Infants Settlement Act the Court of Chancery had not, nor has now the Chancery Division of the High Court, jurisdiction to compel a ward of Court to make a settlement of his or her property; that Act only removed the disability of infancy and not of coverture; therefore, in a post-nuptial settlement the power of alienation of the wife's property must be considered (*h*).

Settlements under the above Act would seem to be within the proviso to the first section of the Infants Relief Act. Nor is a settlement by an infant before marriage, not made under the provisions of the Infants Settlement Act, affected by the Infants Relief Act, not being a contract to which such Act extends. Assuming such settlement to be for the infant's benefit, it is voidable only and not void, that is to say, unless avoided by the infant after coming of age, it will be binding; and in like manner a covenant by a

(*f*) *Warwick v. Bruce*, 2 M. & S. 205.

(*g*) See *In re Philips*, L. R. 34 Ch. D. 467.

(*h*) *Buckmaster v. Buckmaster*, W. N. (1887), 41; and see *In re Sampson & Wall*, L. R. 25 Ch. D. 483. See also *post*, ch. xiv., III.

female infant to settle property which may be acquired by her after marriage will be binding, if she do not after attaining full age avoid it (i). Chap. II.

Whatever may have been the old rule of the common law (k), unsoundness of mind (as also intoxication) would now be a good defence to an action upon a contract, if it be shown that the defendant was not of capacity to contract and the plaintiff knew it (l). As expressed by Pollock, C.B. (m):— *Non compotes mentis.*

“When a person apparently of sound mind, and not known to be otherwise, enters into a contract for the purchase of property which is fair and *bonâ fide*, and which is executed and completed, and the property, the subject-matter of the contract, has been paid for and fully enjoyed, and cannot be restored so as to put the parties *in statu quo*, such contract cannot afterwards be set aside, either by the alleged lunatic, or those who represent him.”

And by Patteson, J. (n):—

“Modern cases have enabled a man, or his representatives, to show that he was so lunatic, or drunk, as not to know what he was about when he made a promise, or sealed an instrument, . . . that when that state of mind was unknown to the other contracting party, and no advantage was taken of the lunatic, the defence cannot prevail, especially where the contract is not merely executory, but executed in the whole or in part, and the parties cannot be restored altogether to their original position.”

On the same principle a lunatic will be liable upon the

(i) See *Smith v. Lucas*, L. R. 18 Ch. D. 531; *Wilder v. Pigott*, 22 Ch. D. 263; *Burnaby v. Equitable Reversionary Interest Society*, 28 Ch. D. 417; *In re Vardon's Trusts*, 31 Ch. D. 275.

(k) See Bl. vol. ii. 291; Pollock on

Contracts, 88.

(l) *Molton v. Camroux*, 2 Ex. 487.

(m) *Ib.* 503. As to the tests of mental capacity, see *Smith v. Tebbitt*, L. R. 1 Pr. & D. 398.

(n) *Molton v. Camroux*, 4 Ex. 19.

Chap. II.

contracts of his agent appointed before lunacy, where the plaintiff at the time, (*e.g.*) of supplying the goods to the order of such agent, was unaware of the supervening insanity (*o*).

The contract of a drunken man is not void but only voidable; and, if upon coming to his senses he ratifies it, he is bound by it (*p*).

Married
women.

At common law a married woman was absolutely incompetent to contract without the consent of her husband, being *sub potestate viri: vir et uxor sunt quasi unica persona, quia caro una, sanguis unus* (*q*). She was incapable of binding herself by any contract; it was altogether void, and no action would lie against her husband or herself for the breach of it (*r*). An exception to this was where her husband was *civiliter mortuus*, as a convict under sentence of transportation (*s*). Also by the custom of London a *feme covert* might be a sole trader, and as such sue and be sued in the City Courts (*t*).

By statute, that is, under the Act in 1857 which constituted the Court for Divorce and Matrimonial Causes (*u*), a wife deserted by her husband was enabled to obtain an order to protect her earnings and property, acquired since the commencement of the desertion, from her husband and all creditors and persons claiming under him, as if she were a *feme sole*, and during such desertion the wife is to be deemed in the like position with regard to property and

(*o*) *Drew v. Nunn*, L. R. 4 Q. B. D. 661.

(*p*) *Matthëws v. Baxter*, L. R. 8 Ex. 132.

(*q*) Co. Litt. 112 a; ed. by Thomas, vol. i. 129, 130.

(*r*) *Per* Pollock, C.B., in *Liverpool Adelphi Loan Ass. v. Fairhurst*, 9 Ex. 429.

(*s*) *Ex parte Franks*, 7 Bing. 762.

(*t*) *Beard v. Webb*, 2 B. & P. 93.

(*u*) 20 & 21 Vict. c. 85.

contracts, and suing and being sued, as if she had obtained a decree of judicial separation (x), that is to say :— Chap. II.

S. 25. “In every case of a judicial separation the wife shall, from the date of the sentence, and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead; provided, that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

S. 26. “In every case of a judicial separation the wife shall, whilst so separated, be considered as a *feme sole* for the purposes of contract and wrongs and injuries, and suing and being sued in any civil proceeding, and her husband shall not be liable in respect of any engagement or contract she may have entered into, or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant; provided, that where upon any such judicial separation alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessaries supplied for her use; provided also, that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.”

In the earlier of the above sections reference is made to property of the married woman “held to her separate use,” that is to say, property which in equity was treated as her

(x) 20 & 21 Vict. c. 85, s. 21. See also 21 & 22 Vict. c. 108, ss. 8—10, for the protection of persons dealing with married women, who have obtained a protecting order or a decree for judicial separation.

Chap. II.

separate estate independently of her husband and free from his control, debts, or engagements (*y*). In equity such estate, not restrained against anticipation or alienation (*z*), as a married woman had at the time of contracting the engagement could be made liable to her general engagements made in reference to and on the faith or credit of that estate (*a*). By the Married Women's Property Act, 1882 (*b*), the equitable doctrine has been adopted and extended and made part of the law of the land: it was thereby enacted generally, with regard to her power of acquiring and disposing of property:—

S. 1 (1). "A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, or disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole*, without the intervention of any trustee."

Then with regard to her contracts it was enacted:—

S. 1 (2). "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise (*c*).

(*y*) See explanation of the doctrine in M. L. R. P. 119 *et seq.*

(*z*) See *In re Currey*, L. R. 32 Ch. D. 361.

(*a*) *Johnson v. Gallagher*, 30 L. J.

Ch. 298; *Pike v. Fitzgibbon*, L. R. 17 Ch. D. 454.

(*b*) 45 & 46 Vict. c. 75.

(*c*) As to form of judgment, see *Bursill v. Tanner*, L. R. 13 Q. B. D. 691.

S. 1 (3). "Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.

S. 1 (4). "Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire."

And as a consequence it was enacted :—

S. 1 (5). "Every married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a *feme sole*" (*d*).

It will be observed that every contract will be deemed to be with respect to the married woman's separate property, unless the contrary be shown; and also that her engagements can be enforced against separate estate to which she has become entitled subsequently to such engagements (*e*). But the Act does not interfere with any restriction against anticipation attached to the assignment of any property or income preventing her dealing with it (*f*), unless created by the woman herself (*g*); for instance, the income of property held by trustees for her separate use without power of anticipation paid to her since judgment,

(*d*) See *Ex parte Gilchrist, In re Armstrong*, L. R. 17 Q. B. D. 521. 'Separate property' does not include a general power of appointment by deed or will.

(*e*) But see *In re Shakespeare*, L. R. 30 Ch. D. 169.

(*f*) Even property held in trust for her separate use absolutely, but without power of anticipation : *In re Grey's Settlements, Acaron v. Greenwood*, W. N. (1887) 62.

(*g*) 45 & 46 Vict. c. 75, s. 19, *post*, p. 48. See M. L. R. P. 123.

Chap. II.

cannot be taken in satisfaction by the creditor (*h*), it is not 'means' out of which the judgment could be satisfied.

It is further enacted that every woman married after 1882 shall be entitled to have, hold, and dispose of, as her separate property all property which shall belong to her at marriage, or shall be acquired by or devolve upon her after marriage (*i*); and every woman married before 1st January, 1883, shall be entitled to have, hold, and dispose of as her separate property all property her title to which shall accrue after 1882 (*k*).

But, in the case of a woman married before 1883 the effect of the last provision will not be to make property falling into possession after 1882 her separate property, if she became entitled to it subject to a life estate before 1883; in such case her title would have previously accrued (*l*). Nor will it require a will made before the Act came into operation to be construed otherwise than as such will would have been construed if the Act had not passed (*m*). So that under a gift by will, dated in 1880, to C. and J. and E. his wife, by a testatrix who died in 1883, the three legatees were entitled as joint tenants, C. to one moiety and J. and E. (taking by 'entireties') to another moiety; the effect of the Act was only to give the one moiety between J. and E., J. taking in his own right and E. to her separate use (*n*).

The old doctrine was that by marriage the husband and wife became one person in law, "so that the very being and existence of the woman is suspended during the

(*h*) *Draycott v. Harrison*, L. R. 17 Q. B. D. 147.

(*i*) 45 & 46 Vict. c. 75, s. 2.

(*k*) S. 5.

(*l*) *Reid v. Reid*, L. R. 31 Ch. D. 402.

(*m*) *In re March, Mander v. Harris*, L. R. 27 Ch. D. 166.

(*n*) *Ib.* *Sed qu.*: what would have been the effect if the will had been made after 1882? See S. C., 24 Ch. D. 222; and M. L. R. P. 245.

coverture, or entirely merged and incorporated in that of the husband" (o); and, therefore, whatever personal property belonged to the wife before marriage was by marriage absolutely vested in the husband (p); and if she were indebted before marriage, he was bound afterwards to pay the debt, having adopted her and her circumstances together. The change effected by the above provisions of the Married Women's Property Act, 1882, necessarily led to further provisions limiting the husband's liability in respect of debts or liabilities contracted by his wife before marriage, and transferring the liability to her own property. Accordingly it was enacted that, to the extent of her separate property, a woman shall after marriage continue liable for all debts contracted, and all contracts entered into or wrong committed by her before marriage, and may be sued for the same: as regards a woman married before 1883 her liability will extend only to property made her separate property by the Act (q). On the other hand, the husband is not to be liable for such ante-nuptial debts, contracts, or wrongs of his wife further than to the extent of property belonging to his wife, which he shall have acquired, or become entitled to, from or through his wife, after deducting any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law in respect of any ante-nuptial liabilities (r); but this is not to affect the liability or otherwise of a husband married before 1883.

The Act declares that every woman, whenever married, shall have in her own name against all persons whomso-

(o) 2 Bl. 433; and see 1 Bl. 442.

(p) See *post*, ch. xiv., III.

(q) 45 & 46 Vict. c. 75, s. 13.

(r) 45 & 46 Vict. c. 75, s. 14. As

to suing husband and wife jointly, and consequences of so doing, see s. 15.

Chap. II.

ever, including her husband, the same remedies for the protection and security of her separate property as if it belonged to her as a *feme sole* (s); and provision is made for the adjudication in a summary way of questions between husband and wife as to her property (u). Before the Act a wife might sue her husband in equity in respect of her separate property, and so might a husband sue his wife (x); he might obtain a decree against her for breach of any contract whereby she had intended to bind her separate estate, and this right the Act has not taken away. Therefore a husband can sue his wife to charge her separate estate for money lent by him or paid at her request after marriage, whether the request was made before or after marriage (y); but he could not before the Act, nor can he since, maintain an action for money so lent or paid before marriage (z).

Settlements made or to be made, before or after marriage, respecting the property of any married woman are protected from the operation of the Act; and similarly it is not to interfere with any restriction against anticipation attached, or to be attached, to the enjoyment of any property or income by her under any settlement, will, or other instrument (a). But it is provided that no such restriction contained in a settlement to be made by herself shall have any validity against debts contracted by her before marriage, and that no settlement shall have greater force or

(s) 45 & 46 Vict. c. 75, s. 12.

(u) *Ib.* s. 17.

(x) 1 Daniell's Ch. Pr. 138, 139, 186.

(y) *Butler v. Butler*, L. R. 16 Q. B. D. 374. See *In re Hastings, Hallett v. Hastings*, W. N. (1887), 69.

(z) *Butler v. Butler*, L. R. 14 Q. B. D. 831.

(a) 45 & 46 Vict. c. 75, s. 19. See *In re Currey, Gibson v. Way*, L. R. 32 Ch. D. 361; *In re Bown, O'Halloran v. King*, 27 Ch. D. 411; and *In re Vardon's Trusts*, 31 Ch. D. 275.

validity against her creditors than a like settlement made by a man would have against his creditors (*b*). Chap. II.

Now, under the Conveyancing and Law of Property Act, 1881, notwithstanding that a married woman is restrained from anticipation, the Court may, where it appears to be for her benefit, by judgment or order, with her consent, bind her interest in any property (*c*).

Also under the same Act, a married woman, whether an infant or not, is empowered as if she were unmarried and of full age, by deed to appoint an attorney to execute any deed or do any other act which she might herself execute or do (*d*).

In consequence of the provisions previously referred to of the above Act, it is manifest that a covenant in a marriage settlement to settle property which may be afterwards acquired by the wife should now be entered into by the wife alone; for the husband taking no marital interest in her property cannot bind it by his covenant. Under such a covenant will be bound property, which, but for the above provision in favour of settlements, would under the Act have become the woman's separate property (*e*). A settlement of a woman's property is still in most cases desirable, for a protection to her as well against herself as her husband, and for the benefit of her children.

The old rule was that corporations could contract only under seal; an exception was gradually introduced in the case of trading corporations in respect of contracts in connection with their business. The old rule, and the esta- Corporations.

(*b*) 45 & 46 Vict. c. 75, s. 19. See *post*, ch. xii., I.

(*c*) 44 & 45 Vict. c. 41, s. 39. See M. L. R. P. 125.

(*d*) S. 40. See M. L. R. P. 328.

(*e*) *In re Whitaker, Christian v. Whitaker*, L. R. 34 Ch. D. 227.

Chap. II. blishing of such exception, was thus stated by Bovill, C.J. (*f*):—

“Originally all contracts by corporations were required to be under seal. From time to time certain exceptions were introduced, but these for a long time had reference only to matters of trifling importance and frequent occurrence, such as the hiring of servants and the like. But, in progress of time, as new descriptions of corporations came into existence, the Courts came to consider whether these exceptions ought not to be extended in the case of corporations created for trading and other purposes. At first, there was considerable conflict; and it is impossible to reconcile all the decisions on the subject. But it seems to me that the exceptions created by the recent cases are now too firmly established to be questioned by the earlier decisions, which, if inconsistent with them, must I think be held not to be law. These exceptions apply to all contracts by trading corporations entered into for the purposes of which they are incorporated. A company can only carry on business by agents, managers, and others; and if the contracts made by these persons are contracts which relate to objects and purposes of the company, and are not inconsistent with the rules and regulations which govern their acts, they are valid and binding upon the company, though not under seal. It has been urged that the exceptions to the general rule are still limited to matters of frequent occurrence and small importance. The authorities, however, do not sustain that argument. It can never be that one rule is to obtain in the case of a contract for £50 or £100, and another in the case of a contract for £50,000 or £100,000.

* * * * *

“In most cases, a trading company must carry on its business by means of agents; and in those cases there is an implied authority in the agents to make contracts on behalf of the company in the ordinary course of business. The business of a trading corporation could not otherwise be carried on.”

(*f*) *South of Ireland Colliery Co. v. Waddle*, L. R. 3 C. P. 469; affirmed 4 C. P. 617. And see *per* Cotton, L.J., in *Hunt v. Wimbledon Local Board*, 4 C. P. D. 59.

The directors, or a committee of them, may enter into contracts on behalf of companies incorporated under the Companies Clauses Act, 1845 (*g*), and where, if made between private persons, the contract would have to be in writing, the contract may be signed by such committee, or any two of them, or any two of the directors; and similarly, in respect of contracts on behalf of any company under the Companies Act, 1862 (*h*), it is enacted by the Companies Act, 1867 (*i*), that :—

S. 37 (2). “ Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged (*k*), and

S. 37 (3). “ Any contract, which if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged.”

On the other hand, under the Public Health Act, 1875 (*l*), it is required that, with respect to contracts made by an urban authority, every contract, whereof the value or amount exceeds £50, shall be in writing, and sealed with the common seal of such authority. As to the extent and scope of this enactment, Bramwell, J., said (*m*) :—

“ I think that s. 174 is applicable to cases other than those

(*g*) 8 & 9 Vict. c. 16, s. 97.

(*h*) 25 & 26 Vict. c. 89.

(*i*) 30 & 31 Vict. c. 131, s. 37.

(*k*) *Jones v. Victoria Graving Dock Co.*, L. R. 2 Q. B. D. 314.

(*l*) 38 & 39 Vict. c. 55, s. 174.

(*m*) *Hunt v. Wimbledon Local Board*, L. R. 4 C. P. D. 51. And see *Phelps v. Upton Snodsbury Highway Board*, W. N. (1885), 92.

Chap. II. alluded to in it, and that it is not limited to them. The section is general, and refers to every class of contract, and there is no reason for limiting it. In the next place, I think the section is not merely directory but obligatory. It is not prohibitory so as to constitute the making of a contract, otherwise than in writing and under seal, an offence, but it is a mandatory direction that contracts shall be made in a particular way, that is to say, in writing and under seal. The enactment relates to a contract which is the act of both parties, and is applicable not to one of them alone, but to both of them. I do not mean to say that the section makes anything particularly necessary upon the part of the contractee, but it requires that the evidence of the obligation of the two parties must be in writing and sealed with their seals."

Contracts
with two or
more jointly.

A contract may, of course, be entered into with more persons than one. The effect of such in certain instruments, executed since 1881, in the absence of expression of contrary intention, is thus declared by the Conveyancing and Law of Property Act, 1881 (*n*):—

S. 60 (1). "A covenant and a contract under seal (*o*), and a bond or obligation under seal (*p*), made with two or more jointly, to pay money or to make a conveyance or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves."

(*n*) 44 & 45 Vict. c. 41, s. 60. See M. L. R. P. 160.

(*o*) No particular form of words is necessary to form a covenant; but wherever the Court can collect from the instrument an engagement on the one side to do or not to do something, it amounts to a covenant: *per* Parke,

B., in *Great Northern Rail. Co. v. Harrison*, 12 C. B. 609. See Broom's *Philosophy of Law*, by Flood, 117 *et seq.*

(*p*) See M. L. R. P. 115; and Broom's *Philosophy of Law*, by Flood, 113.

The contract itself must not be illegal, it must not contravene 'the policy of the law' (*q*), whether expressed by statute or otherwise. Thus Mr. Benjamin says (*r*):—

Chap. II.

III. Illegal contracts.

"The contract of sale, like all other contracts, is void when entered into for an illegal consideration or for purposes violative of good morals or prohibited by the lawgiver. The thing sold may be such as in its nature cannot form the subject of a valid contract of sale, as an obscene book or an indecent picture, which are deemed by the common law to be evil and noxious things. The article sold may be in its nature an innocent and proper subject of commercial dealings, as a drug, but may be knowingly sold for the purpose prohibited by law, of adulterating food or drink. Or the sale may be prohibited by statute for revenue purposes, or other motive of public policy. In all these cases the law permits neither party to maintain an action on such a sale."

Under an unlawful agreement, however, where money has been paid, or goods delivered, but there has been no further performance of it, the party paying the money or delivering the goods may repudiate the transaction, and recover back his money or goods (*s*). In other words, if money is paid or goods delivered for an illegal purpose, the person who has so paid the money or delivered the goods may recover them back before the illegal purpose is carried out; but if he waits until the illegal purpose is carried out, or if he seeks to enforce the illegal transaction, in neither case can he maintain an action; the law will not allow that to be done (*t*).

Any person who contributes to the performance of an illegal act by supplying a thing with the knowledge that it

(*q*) See M. L. R. P. 92.

(*r*) Benjamin on Sale, 496.

(*s*) *Taylor v. Bowers*, L. R. 1 Q. B. D. 295, per Cockburn, C.J.

(*t*) *Ib.* 300, per Mellish, L.J. And see *Wilson v. Strugnell*, L. R. 7 Q. B.

D. 551, per Stephen, J.

Chap. II. is going to be used for that purpose, cannot recover the price of the thing so supplied (*u*). Said Pollock, C.B. (*x*):—

“If, to create that incapacity, it was ever considered necessary that the price should be bargained or expected to be paid out of the fruits of the illegal act (which I do not stop to examine), that proposition has been overruled by the cases I have referred to, and has now ceased to be law. Nor can any distinction be made between an illegal and an immoral purpose; the rule which is applicable to the matter is, *ex turpi causâ non oritur actio*, and whether it is an immoral or an illegal purpose in which the plaintiff has participated, it comes equally within the terms of that maxim, and the effect is the same; no cause of action can arise out of either the one or the other.”

A contract cannot be enforced where the consideration is illegal, whether in whole or in part; if either part of the consideration be illegal, the whole falls to the ground (*y*). But it is otherwise where the contract can be separated into distinct parts, and the consideration as to part only is illegal. As expressed by Willes, J. (*z*):—

“The general rule is that, where you cannot sever the illegal from the legal part of a covenant, the contract is altogether void; but, where you can sever them, whether the illegality be created by statute or by the common law, you may reject the bad part and retain the good.”

Contracts of sale to an alien enemy, smuggling contracts, contracts in fraud of creditors, contracts of sale by the

(*u*) *Pearce v. Brooks*, L. R. 1 Ex. 217, per Pollock, C.B.

(*x*) *Ib.*

(*y*) *Waite v. Jones*, 1 Bing. N. C. 662, per Tindal, C.J. And see *Harrington v. Victoria Graving Dock Co.*, L. R. 3 Q. B. D. 549; and *Ex parte*

Wolverhampton Banking Co., In re Campbell, 14 Q. B. D. 32.

(*z*) *Pickering v. Ilfracombe Rail. Co.*, L. R. 3 C. P. 250. And see *Odessa Tramways Co. v. Mendel*, L. R. 8 Ch. D. 235; and notes to *Collins v. Blantern*, 1 Sm. L. Ca. 387.

terms of which the vendor is restrained generally in the carrying on of his trade (*a*), are all void as against public policy. Upon this doctrine Jessel, M.R., said (*b*):—

“It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because if there is one thing which more than another public policy requires it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider, that you are not lightly to interfere with this freedom of contract. Now, there is no doubt public policy may say that a contract to commit a crime, or a contract to give a reward to another to commit a crime, is necessarily void. The decisions have gone further, and contracts to commit an immoral offence, or to give money or reward to another to commit an immoral offence, or to induce another to do something against the general rules of morality, though far more indefinite than the previous class, have always been held to be void. I should be sorry to extend the doctrine much further. I do not say there are no other cases to which it does apply: but I should be sorry to extend it much further.”

Contracts not expressly forbidden by Act of Parliament may be so impliedly; thus, everything in respect of which a penalty is imposed by statute, must be taken to be a thing forbidden, and absolutely void to all intents and purposes whatsoever (*c*). But, says Mr. Benjamin (*d*):—

(*a*) See as to this, Benjamin on Sale, 510 *et seq.*

(*b*) *Printing, &c., Co. v. Sampson*, L. R. 19 Eq. 465. See also *Besant v. Wood*, L. R. 12 Ch. D. 620, quoted M. L. R. P. 93.

(*c*) See *In re Cork & Youghal Rail. Co.*, L. R. 4 Ch. Ap. 758, *per* Lord Hatherley, L.C.

(*d*) Benjamin on Sale, 521: see Examination of Cases, 521—526.

Chap. II.

“ The question frequently arises whether, on the true construction of a statute, the contract under consideration has really been prohibited, and in determining this point much weight has been attributed to a distinction held to exist between two classes of statutes, those passed merely for revenue purposes, and those which have in contemplation, wholly or in part, the protection of the public, or the promotion of some object of public policy.”

Contracts
by way of
gaming.

Statutes have been passed from time to time in restraint of unlawful gaming : all previous ones were repealed by the Act of 1845, by which now contracts by way of gaming or wagering are made void. It is enacted (*e*) :—

S. 18. “ That all contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void ; and that no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made. Provided always, that this enactment shall not be deemed to apply to any subscription or contribution or agreement to subscribe or contribute for or toward any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime or exercise.”

Thus, where the plaintiff and defendant agreed to ride a race, each on his own horse, the winner to become possessor of both horses, and the race was run and won by the defendant, who took possession of the horse which had been ridden by the plaintiff ; it was held that no property in the horse passed to the defendant, and the plaintiff was entitled to recover its value. Said Martin, B. (*f*) :—

(*e*) 8 & 9 Vict. c. 109, s. 18.

(*f*) *Coombs v. Dibble*, L. R. 1 Ex. 250.

“ This is a contract, and I think a wager, in the ordinary sense of the word, that one horse should beat the other, to which was added a condition that the winner should have both horses. The section proceeds to enact that no suit shall be brought in any court of law or equity, to recover any sum of money, or ‘ valuable thing ’ alleged to be won in any wager, or which shall have been deposited in the hands of any person, to abide the event on which any wager shall have been made. Now, a horse is ‘ a valuable thing,’ and if it, or the sum of £14 had been in the hands of a stakeholder, I do not think it could have been recovered. Then comes the proviso, that the enactment is not to apply ‘ to any subscription or contribution or agreement to subscribe or contribute for or toward any plate, prize, or sum of money,’ to be awarded to the winner of any lawful game. I think there was no subscription or contribution here. The horse of the loser was to become the property of the winner, and that was a void contract.”

The statute, however, only affects the contract which makes the bet or wager; therefore a person employed by another upon commission to make bets for him cannot refuse to hand over the winnings received, although the bets themselves were void under the statute. Said Bowen, L.J. (g):—

“ The original contract of betting is not an illegal one, but only one which is void. If the person who has betted pays his bet, he does nothing wrong; he only waives a benefit which the statute has given to him, and confers a good title to the money on the person to whom he pays it. Therefore when the bet is paid the transaction is completed, and when it is paid to an agent it cannot be contended that it is not a good payment for his principal. If not, how monstrous it would be that the agent who has received money which belongs to his principal, and which he received for his principal, and only on that account should be

(g) *Bridger v. Savage*, L. R. 15 Q. 4 Q. B. D. 685, as to time bargains on the Stock Exchange.
B. D. 367. See *Thacker v. Hardy*,

Chap. II. allowed to say that the payment was bad and void. The truth is that the contract under which he received the money for his principal is not affected by the collateral contract, under which the money was paid to him."

Tippling
Acts.

Further instances of contracts prohibited by statute are afforded by the so-called Tippling Acts. Thus, as to spirituous liquors, it was enacted by 24 Geo. II. c. 40, that :—

S. 12. "From and after the 1st day of July, 1751, no person or persons whatsoever shall be entitled unto or maintain any cause, action, or suit for, or recover, either in law or equity, any sum or sums of money, debt, or demands whatsoever, for or on account of any spirituous liquors, unless such debt shall have really been and *bonâ fide* contracted at one time, to the amount of twenty shillings or upwards, nor shall any particular article or item in any account or demand for distilled spirituous liquors be allowed or maintained, where the liquors delivered at one time, and mentioned in such article or item, shall not amount to the full value of twenty shillings at the least, and that without fraud or covin, and where no part of the liquors so sold or delivered shall have been returned or agreed to be returned directly or indirectly; and in case any retailer of spirituous liquors, with or without a licence, shall take or receive any pawn or pledge from any person or persons whatsoever by way of security for the payment of any sum or sums of money owing by such person or persons for such spirituous liquors or strong waters, every such person or persons offending herein shall forfeit and lose the sum of forty shillings for each and every pawn or pledge so taken in or received by him or them, to be levied and recovered by warrant under the hand and seal of one justice of the peace where the offence is committed; and that one moiety thereof shall be to the use of the poor of the parish where such offence is committed, and the other moiety to the informer or informers; and the person or persons to whom any such pawn or pledge doth or shall belong shall have the same remedy

for recovering such pawn, or the value thereof, as if it had never been pledged.” Chap. II.

This, however, was partially repealed in 1862 by 25 & 26 Vict. c. 38, namely, “so far only as relates to spirituous liquors sold to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser thereof, in quantities not less at any one time than a reputed quart.”

And as to beer, cider, &c., it was enacted by the County Courts Act, 1867 (*h*):—

S. 4. “No action shall henceforth be brought or be maintainable in any court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which after the commencement of this Act was consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry.”

Also “for the better observation of the Lord’s Day, commonly called Sunday,” it was enacted by 29 Charles II. c. 7, that:— Sales on Sunday.

S. 1. “Noe tradesman, artificer, workeman, labourer, or other person whatsoever shall doe or exercise any worldly labour, business or worke of their ordinary callings upon the Lord’s Day or any part thereof (workes of necessity and charity onely excepted), and that every person being of the age of fourteene yeares or upwards offending in the premises shall for every such offence forfeit the summe of five shillings, and that noe person or persons whatsoever shall publickly cry, shew forth or expose to sale any wares, merchandizes, fruit, herbs, goods or chattells whatsoever upon

(*h*) 30 & 31 Vict. c. 142.

Chap. II.

the Lord's Day or any part thereof upon paine that every person soe offending shall forfeit the same goods soe cryed or shewed forth or exposed to sale."

Every species of labour, business, or work, whether public or private, in the ordinary calling of a tradesman, artificer, workman, labourer, or other person, is within the prohibition of the statute ; therefore an action by a horse-dealer upon the warranty of a horse, where the warranty was given and the horse sold to him on a Sunday, was held not maintainable (i).

(i) *Fennell v. Ridler*, 5 B. & C. 406. Act, 1871 (34 & 35 Vict. c. 87), continued until 31st Dec. 1887, by 50 Vict. c. 5.
 And see *Smith v. Sparrow*, 4 Bing. 84.
 See Sunday Observance Prosecution

CHAPTER III.

Chap. III.

CHOSSES IN POSSESSION (*continued*).

THE entire property in chattels may be transferred subject to a right of redemption on payment of a sum of money at a stipulated time, that is, by way of mortgage; at common law no deed or writing is requisite for such transfer (*a*). An assignment by deed, whether absolute or conditional, is called a bill of sale. The property in the goods passing by deed without delivery, the vendor or mortgagor by remaining in possession was able to gain credit, and so to defraud his creditors. To prevent frauds upon creditors by secret bills of sale the Bills of Sale Act, 1854 (*b*), was passed: its object was fully stated in the preamble thus:—

I. Mortgage—
bills of sale.

“Whereas frauds are frequently committed upon creditors by secret bills of sale of personal chattels, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons to the exclusion of the rest of their creditors, for remedy whereof be it therefore enacted, &c.”

This enactment was repealed in 1878, and another Act was passed to consolidate and amend the law relating to bills of sale, which in its turn was amended in 1882; so that the law now in force is contained in the Bills of Sale Acts, 1878 and 1882 (*c*), except as regards bills of sale

Bills of Sale
Acts, 1878,
1882.

(*a*) *Reeves v. Capper*, 5 Bing. N. C. 29 & 30 Vict. c. 96.

136; *Flory v. Denny*, 7 Ex. 581.

(*b*) 17 & 18 Vict. c. 36, amended by

(*c*) 41 & 42 Vict. c. 31, and 45 & 46
Vict. c. 43.

Chap. III. executed before the 1st of January, 1879 (d). These Acts relate only to 'personal chattels,' which are defined by the principal Act to mean :—

"Goods, furniture, and other articles capable of complete transfer by delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate, nor fixtures (except trade machinery as herein-after defined), when assigned together with a freehold or leasehold interest in any land or building to which they are affixed, nor growing crops when assigned together with any interest in the land on which they grow, nor shares or interests in the stock, funds, or securities of any government, or in the capital or property of incorporated or joint stock companies, nor choses in action, nor any stock or produce upon any farm or lands which by virtue of any covenant or agreement or of the custom of the country ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale" (f).

By the same Act it is provided that 'trade machinery' shall be deemed personal chattels (g), and it is defined to mean :—

"The machinery used in or attached to any factory or workshop ;

"1st. Exclusive of the fixed motive-powers, such as the water-wheels and steam engines, and the steam boilers, donkey engines, and other fixed appurtenances of the said motive powers ; and

"2nd. Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive-powers to the other machinery, fixed and loose ; and

"3rd. Exclusive of the pipes for steam, gas, and water, in the factory or workshop.

(d) 41 & 42 Vict. c. 31, ss. 1, 23.

(f) S. 4.

(g) S. 5.

“The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.” Chap. III

‘Factory or workshop’ is at the same time defined to mean (*h*):—

“Any premises on which any manual labour is exercised by way of trade, or for purposes of gain, in or incidental to the following purposes or any of them; that is to say,—

“(a.) In or incidental to the making any article or part of an article; or

“(b.) In or incidental to the altering, repairing, ornamenting, finishing of any article; or

“(c.) In or incidental to the adapting for sale any article.”

The following documents are excluded from both Acts (*i*), namely:—

“Assignments for the benefit of the creditors of the person making or giving the same, marriage settlements (*k*), transfers or assignments of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, India warrants, warehouse keepers’ certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented.”

But the expression ‘bill of sale’ includes (*l*):—

“Assignments, transfers, declarations of trust without transfer, inventories of goods with receipt thereto attached, or receipts for

(*h*) 41 & 42 Vict. c. 31, s. 5.

(*i*) S. 4; 45 & 46 Vict. c. 43, s. 3.

(*k*) But a post-nuptial settlement or agreement for settlement must be re-

gistered: *Ashton v. Blackshaw*, L. R. 9 Eq. 510.

(*l*) 41 & 42 Vict. c. 31, s. 4.

Chap. III. purchase monies of goods, and other assurances of personal chattels, and also powers of attorney, authorities, or licenses to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels, or to any charge or security thereon, shall be conferred."

'Bill of sale' then includes a document giving licence to take immediate possession of goods as a security for a debt (*m*); but not, when goods are delivered as a security to a pledgee, a document signed by the pledgor recording the transaction and regulating the pledgee's right of sale (*n*); nor an agreement by a clause in an ordinary building contract, that all building and other materials brought by the builder upon the land shall become the property of the landlord (*o*); nor a parol agreement to give a bill of sale (*p*). It also includes a written contract for the purchase of a business containing a declaration that the vendors shall have a lien or charge on the effects for the unpaid purchase money (*q*).

Bills of Sale Act, 1882.
—Its requirements and effect.

The Amendment Act of 1882 applies only to documents given by way of security for payment of money (*r*), which must be in accordance with the form in the Schedule annexed to the Act (*s*); and the consideration must not be under £30 (*t*). Such bill of sale (*1*) must be duly attested

(*m*) *Ex parte Parsons, In re Townsend*, L. R. 16 Q. B. D. 532.

(*n*) *Ex parte Hubbard, In re Hardwicke*, L. R. 17 Q. B. D. 690.

(*o*) *Reeves v. Barlow*, L. R. 12 Q. B. D. 436.

(*p*) *Ex parte Hauzwell, In re Hemingway*, L. R. 23 Ch. D. 626.

(*q*) *Coburn v. Collins*, W. N. (1887), 48.

(*r*) 45 & 46 Vict. c. 43, s. 3. For instance of comprehensiveness of this section, see *N. Central Wagon Co. v. Manchester, Sheffield, and Lincolnshire Rail. Co.*, 32 Ch. D. 477.

(*s*) 45 & 46 Vict. c. 43, s. 9.

(*t*) S. 12. See *Davis v. Usher*, L. R. 12 Q. B. D. 490.

by one or more credible witness or witnesses, not a party or parties thereto (*u*); (2) it must be registered under the principal Act in the Supreme Court registry within seven days after execution, or if executed out of England within seven days after the time at which it would in ordinary course arrive in England if posted immediately after execution (*x*), and, if the grantor resides or the goods are outside the London Bankruptcy District, the Registrar is to transmit within three clear days of registration an abstract for registration to the Registrar of the County Court of the district or districts where the grantor resides and the goods are situate (*y*); (3) it must truly set forth the consideration for which it was given (*z*); otherwise, if any of the above three conditions are not observed, it will be void (*a*). There must at the same time with registration be presented to, and filed with, the Registrar a copy of the bill of sale and an affidavit of the time of such bill of sale having been made, and of its due execution and attestation, and a description of the residence and occupation of the grantor and of every attesting witness (*b*).

The registration must be renewed once at least every five years, or will become void (*c*); but re-registration is not necessary by reason only of transfer or assignment of the bill of sale (*d*). Any judge of the High Court, on being

(*u*) 45 & 46 Vict. c. 43, ss. 8, 10; and 41 & 42 Vict. c. 31, s. 10, §§ 2, 3.

(*x*) 45 & 46 Vict. c. 43, s. 8; 41 & 42 Vict. c. 31, ss. 13, 21; R. S. C. (1883), Ord. LXI. rr. 25—27; and as to local registration, R. S. C. (Dec. 1882).

(*y*) 45 & 46 Vict. c. 43, s. 11.

(*z*) *Ib.* s. 8. See *post*, p. 74.

(*a*) 45 & 46 Vict. c. 43, s. 8.

(*b*) 41 & 42 Vict. c. 31, s. 10 (2). See *Blaiberg v. Parke*, L. R. 10 Q. B.

D. 90; *In re Hever, Ex parte Kahen*, 21 Ch. D. 871.

(*c*) 41 & 42 Vict. c. 31, s. 11. The statement of names, &c., in affidavit on re-registration, must accord with that in previous affidavit: see *Ex parte Webster, In re Morris*, L. R. 22 Ch. D. 136.

(*d*) 41 & 42 Vict. c. 31, s. 10. See *Ex parte Turquand, In re Parker*, L. R. 14 Q. B. D. 636.

Chap. III. satisfied that the omission to register a bill of sale, or an affidavit of renewal, within the prescribed time, or the omission or misstatement of the name, residence, or occupation of any person, was accidental or due to inadvertence, may in his discretion order the same to be rectified by the insertion of the true name, residence, or occupation, or by extending the time for such registration on such terms and conditions as he thinks fit (*e*).

To the bill of sale there must be a schedule containing an inventory of the chattels comprised in it (*f*); and in respect of any chattels not specifically described, or of which the grantor was not the true owner at the time of execution, it will be void, except as against the grantor (*g*), and except in respect of any of the following things (*h*), that is to say:—

S. 6 (1.) “Any growing crops separately assigned or charged, where such crops were actually growing at the time when the bill of sale was executed.

(2.) “Any fixtures separately assigned or charged, and any plant, or trade machinery where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, shop, house, warehouse, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule to such bill of sale.”

The above exception must be read together with the antecedent provision in the principal Act (*i*), namely:—

(*e*) 41 & 42 Vict. c. 31, s. 14; In the matter of the Bills of Sale Act, “Times,” April 5, 1887.

(*f*) 45 & 46 Vict. c. 43, s. 4.

(*g*) 45 & 46 Vict. c. 43, s. 5. See *Roberts v. Roberts*, L. R. 13 Q. B. D. 794.

(*h*) 45 & 46 Vict. c. 43, s. 6.

(*i*) 41 & 42 Vict. c. 31, s. 7; 45 & 46 Vict. c. 43, s. 3. As to this provision, see *per* Bacon, V.-C., in *Ex parte Moore and Robinson's Banking Co.*, L. R. 14 Ch. D. 386.

S. 7. “No fixtures or growing crops shall be deemed Chap. III. under this Act to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land, if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which such crops grow, is also conveyed or assigned to the same persons or person.”

It would seem that an assignment of all the book debts due and owing, *or* which might during the continuance of the security become due and owing to the mortgagor in a specified business, would be valid, and operate to pass the interest in a debt come into existence subsequently (*k*); but not so where the assignment would apply to any book debt to become due to the assignor in any business carried on by him during the continuance of the security, such an assignment being too vague.

The Amendment Act does not affect the validity of anything done or suffered under the principal Act before its commencement, that is, the 1st Nov. 1882 (*l*).

Although by the bill of sale the chattels comprised in it are assigned to the grantee, such person may not seize or take possession of them except for one of the following causes (*m*), namely :—

Seizure of
goods and
sale.

S. 7 (1.) “If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and necessary for maintaining the security ;

(*k*) *The Official Receiver v. Tailby*, (Ch.) 193.

L. R. 18 Q. B. D. 25. See *Holroyd v.* (*l*) 45 & 46 Vict. c. 43, ss. 2, 15.

Marshall, 10 H. of L. C. 191 ; 33 L. J. (*m*) 45 & 46 Vict. c. 43, s. 7.

Chap. III.

(2.) "If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes ;

(3.) "If the grantor shall fraudulently either remove or suffer the said goods, or any of them, to be removed from the premises ;

(4.) "If the grantor shall not without reasonable excuse (*n*), upon demand in writing by the grantee, produce to him his last receipts for rent, rates, and taxes ;

(5.) "If execution shall have been levied against the goods of the grantor under any judgment at law."

And it is provided that the grantor may within five days from such seizure or taking possession apply to the High Court ; and the Court, or a Judge thereof, if satisfied that by payment of money or otherwise the cause of seizure no longer exists, may restrain the grantee from removing or selling, or may make such other order as may seem just (*o*) ; and, doubtless in furtherance of such provision, the goods may not be removed or sold until after five clear days from the day they were seized or taken possession of (*p*).

Form.

The form of bill of sale given in the schedule, in accordance with which one made or given by way of security for payment of money must be, or it will be void, is as follows (*q*) :—

"This indenture, made the day of , between A. B. of of the one part, and C. D. of of the other part, witnesseth that in consideration of the sum of £ now paid to A. B. by C. D., the receipt of which the said A. B.

(*n*) See *Ex parte Cotton*, L. R. 11 Q. B. D. 301.

(*o*) 45 & 46 Vict. c. 43, s. 7.

(*p*) *Ib.* s. 13. See *O'Neil v. City & County Finance Co.*, L. R. 17 Q. B. D. 234, where a carriage and horses were seized in a public street and removed to premises of the grantee. As to grantee's powers of seizure and of sale,

and whence derived, whether by implication or under the Conveyancing Act, 1881 (44 & 45 Vict. c. 41, ss. 19, 20), see diverse opinions of the Judges in *Ex parte Official Receiver*, *In re Morritt*, L. R. 18 Q. B. D. 222 ; *Watkins v. Evans*, *ib.* 386.

(*q*) 45 & 46 Vict. c. 43, s. 9,

hereby acknowledges (*or whatever else the consideration may be*), Chap. III.
 he the said A. B. doth hereby assign unto C. D. his executors,
 administrators, and assigns, all and singular the several chattels
 and things specifically described in the schedule hereto annexed
 by way of security for the payment of the sum of £ and
 interest thereon at the rate of per cent. per annum (*or what-
 ever else may be the rate*). And the said A. B. doth further agree
 and declare that he will duly pay to the said C. D. the principal
 sum aforesaid, together with the interest then due by equal
 payments of £ on the day of (*or
 whatever else may be the stipulated times or time of payment*). And
 the said A. B. doth also agree with the said C. D. that he will
 (*here insert terms as to insurance, payment of rent, or otherwise,
 which the parties may agree to for the maintenance or defeazance
 of the security*). Provided always that the chattels hereby assigned
 shall not be liable to seizure or to be taken possession of by the
 said C. D. for any cause other than those specified in s. 7 of the
 Bills of Sale Act (1878) Amendment Act, 1882.

“ In witness, &c.

“ Signed and sealed by the said A. B. in the presence of
 me E. F. (*add witness's name, address, and description*).”

Many questions have arisen with regard to this form, and
 many documents have been held to be void by reason of
 not being in accordance with it. Its scope and the object
 of the statute were thus expressed shortly after its coming
 into operation by Brett, M.R. :—

“ Its provisions have been drawn with stringency against the
 holders and the takers of bills of sale. Whatever may be thought
 of the wisdom of this legislation, I feel myself bound to come to
 the conclusion that the object of the statute was twofold: first,
 that the borrower should understand the nature of the security
 which he was about to give for the debt due from him; and,
 secondly, that a creditor upon merely searching the register
 should be able to understand the position of the borrower, and
 should not be compelled to go to a solicitor in order to get
 counsel's opinion as to the meaning of a security already created
 by the borrower. These objects are carried out by s. 9, which

Chap. III.

requires that bills of sale shall, as nearly as possible, be in the form given in the Schedule; that form is very simple, and an intending creditor has the opportunity of ascertaining how far he ought to trust the borrower, and he need not take advice as to the document before him. The legislature intended that the loan of money upon the security of a bill of sale shall be a simple transaction; a bill of sale given by way of security for the payment of money shall be void against all the world, even as against the grantor, if it does not comply with the provisions of s. 9. That enactment provides that a bill of sale shall be 'in accordance with the form in the Schedule.' That must mean that every bill of sale shall be substantially like the form in the Schedule. Nothing substantial must be subtracted from it, and nothing actually inconsistent must be added to it. The real principle of the form is that whatever may be the consideration for the sum of money secured by the bill of sale, a fixed sum shall be stated therein in figures and in direct terms, and that sum, with rateable interest thereon, shall be recovered by the holder; that interest shall be calculated up to the time when the sum mentioned as the principal amount shall be called in. The grantee must not attempt to alter the sum secured, and nothing must be added to it except by way of rateable interest. The statute does not prevent payment of the principal sum by instalments, together with interest from time to time falling due; and at the time of paying each instalment, interest at the agreed and named rate may be added. And I do not think that the statute prevents the payment of interest by instalments becoming due at fixed periods. But if upon failure to pay the first instalment the whole of the interest, which the grantee is ultimately upon performance of the contract to receive, becomes immediately payable, the bill of sale would, I think, be contrary to the form in the Schedule of the Act; for interest is payable upon money only so long as it is due, and it is contrary to the nature of interest to make it payable before it is due, on the ground that a condition has not been performed, or because a certain event has happened; that is an alteration of, and a departure from, the form given in the Schedule to the Act" (r).

(r) *Davis v. Burton*, L. R. 11 Q. B. D. 539.

Therefore it was held that a document which provided for payment of capitalized, instead of rateable, interest was void (s); that the same document was also void because it enabled the grantee, who had lent the money, to seize the goods upon a failure to comply with a verbal demand for the production of receipts for rents, rates, and taxes (t). And a document, which authorised the grantee, who was an auctioneer, to reimburse himself costs of sale "including therein the full charges and commission of the grantee as auctioneer, as if he were selling on behalf of the grantee," was held to be void (u). Similarly, although perhaps not contravening the Act except in not following the prescribed form, a complicated document not substantially in accordance with the form will be void; for instance, one made between the grantor and several other parties for securing to each of those parties separately different debts of different amounts, borrowed at different times, and payable at different times and under different conditions (v). Also an agreement to perform the covenants and stipulations in a recited indenture, those covenants and stipulations not appearing on the document, will render such document void (x); so will a provision that upon any sale the purchaser shall not be bound to see or inquire whether any default has been made (y). The sum secured must be payable at a specified time, and not on demand (z) or if the grantee shall

(s) *Ib.* And see *Myers v. Elliott*, L. R. 16 Q. B. D. 526; and *Goldstrom v. Tallermann*, 18 Q. B. D. 1.

(t) See 45 & 46 Vict. c. 43, s. 7 (4), *ante*, p. 68.

(u) *Furber v. Cobb*, L. R. 18 Q. B. D. 494. Similarly, authority to purchase at a valuation, *Lyon v. Morris*, W. N. (1887), 76.

(v) *Melville v. Stringer*, L. R. 13 Q. B. D. 392; and see *Goldstrom v. Tallermann*, 18 Q. B. D. 1; and *Furber v. Cobb*, 18 Q. B. D. 494, *per* Lord Esher, M.R., and Sir J. Hannen.

(x) *Lee v. Barnes*, L. R. 17 Q. B. D. 77.

(y) *Blaiberg v. Parsons*, L. R. 17 Q. B. D. 336; *Blaiberg v. Beckett*, 18 Q. B. D. 96.

(z) *Melville v. Stringer*, L. R. 13 Q. B. D. 392; and *In re Williams, Ex parte Pearce*, 25 Ch. D. 656; *Hether-*

Chap. III. be called upon to pay a guaranteed sum (*a*). So strict is the rule that the form must be followed that if the grantor purport to assign the chattels "as beneficial owner," the document will be void (*b*). It is immaterial that it is a document within the definition of a bill of sale in the principal Act but from its nature impossible to be in the form ; for instance, a licence to take immediate possession of goods (*c*). If the document is void, it is wholly so ; therefore a covenant contained in it for the payment of principal and interest is void (*d*).

On the other hand, an agreement that the grantor will pay the premiums of insurance and produce and deliver the receipts to the grantee will not invalidate the instrument (*e*). Nor will an agreement that the grantee may pay all rent, rates, taxes, charges, assessments, and outgoings at any time due in respect of the premises in which the chattels may be, and that such payments with interest shall be a charge upon the assigned chattels (*f*) ; nor will the instrument be invalid because the payments of interest may vary in amount from time to time (*g*), or the rate is stated at "1s. in the pound per month" instead of so much per cent. per annum (*h*) ; nor because there is inserted a con-

ington v. Groome, 13 Q. B. D. 789 ;
Sibley v. Higgs, 15 Q. B. D. 619.

(*a*) *Hughes v. Little*, L. R. 18 Q. B. D. 32.

(*b*) *Ex parte Stanford, In re Barber*, L. R. 17 Q. B. D. 259 ; and *Goldstrom v. Tallermann*, 18 Q. B. D. 1. Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 7. See *In re Cleaver, Ex parte Rawlings*, 18 Q. B. D. 489 ; covenant for further assurance does not invalidate.

(*e*) *Ex parte Parsons, In re Townsend*, L. R. 16 Q. B. D. 532 ; and see *Hughes v. Little*, 18 Q. B. D. 32, as to a bill of

sale given by way of indemnity to a surety. And see *Ex parte Hubbard, In re Hardwick*, 17 Q. B. D. 690, *post*, p. 78.

(*d*) *Davies v. Rees*, L. R. 17 Q. B. D. 408.

(*c*) *Hammond v. Hocking*, L. R. 12 Q. B. D. 291 ; and see *Ex parte Stanford, In re Barber*, 17 Q. B. D. 259.

(*f*) *Goldstrom v. Tallermann*, L. R. 18 Q. B. D. 1.

(*g*) *Ib.* ; or of capital, *In re Cleaver, Ex parte Rawlings*, 18 Q. B. D. 489.

(*h*) *Lumley v. Simmons*, W. N. (1887), 35.

dition that, in case of default in payment of any instalment of principal, the whole of the moneys remaining secured shall become due (*i*); nor because the entire mortgage debt is made payable with interest in one sum on a specified date (*k*); nor will it be invalid because the deed empowers the grantee to seize in case the grantor "shall do or suffer any matter or thing whereby he shall become a bankrupt" (*l*), instead of following the words of the Act (*m*).

An express power to seize the chattels for any of the causes specified in s. 7 of the Act of 1882, and for that purpose to break open the doors and windows of the premises where they may be, will not invalidate a bill of sale (*n*); nor will a provision that the power of sale conferred upon the mortgagees by the Conveyancing and Law of Property Act, 1881, shall be exerciseable by them as if the 20th section of the said Act had not been enacted (*o*).

Nor will an agreement that the grantor should replace articles which should be worn out, and that after sale the grantee may retain the cost of discharging any distress, execution, or other incumbrance, and of the removal, warehousing, valuing, or sale, invalidate, but such stipulations may be introduced for "the maintenance or defeasance" of the security (*p*); nor will a bill of sale be void which

(*i*) *Lumley v. Simmons*, W. N. (1887), 35.

(*k*) *Watkins v. Evans*, L. R. 18 Q. B. D. 386.

(*l*) *Ex parte Allam*, L. R. 14 Q. B. D. 43.

(*m*) 45 & 46 Vict. c. 43, s. 7 (2); *ante*, p. 68.

(*n*) *Ex parte Official Receiver, In re Morritt*, L. R. 18 Q. B. D. 222; *Lumley v. Simmons*, W. N. (1887), 35.

(*o*) *Ex parte Official Receiver, In re Morritt*, L. R. 18 Q. B. D. 222; *Watkins v. Evans*, 18 Q. B. D. 386.

(*p*) *In re Morritt*, L. R. 18 Q. B. D. 222; *Consolidated Credit & Mortgage Corporation v. Gosney*, 16 Q. B. D. 24; *In re Cleaver, Ex parte Rawlings*, 18 Q. B. D. 489; *Furber v. Cobb*, 18 Q. B. D. 494; *Bianchi v. Offord*, 17 Q. B. D. 485; *Lumley v. Simmons*, W. N. (1887), 35.

Chap. III.

does not state the place at which all the goods comprised in it are (*g*).

(Bills of sale—
absolute.)

The Bills of Sale Act, 1878, applies not only to deeds given by way of security for payment of money, and therefore falling within the Amendment Act, 1882 (*r*), but also to such of the documents, as are not securities for payment of money, specified in the interpretation clause (*s*).

A bill of sale under the principal Act, but not within the Amendment Act, must still be attested as well as registered under the principal Act; that is to say, it must be attested by a solicitor, and the attestation must state that before execution the effect has been explained to the grantor by such solicitor, and it must be registered within seven days after the making or giving thereof, as prescribed (*t*); also the consideration must be set forth (*u*). But it will not otherwise, like a bill of sale under the Amendment Act, be void as between the grantor and grantee, but only as against trustees in bankruptcy, sheriffs' officers, and other persons specified in the Act.

The con-
sideration.

By the principal Act (*x*) it was required that the bill of sale should "set forth" the consideration for which it was given, that is to say, that the consideration must be truly stated, honestly stated, without any concealment or fraud (*y*); in the Amendment Act, 1882, it is expressed that the consideration must be "truly set forth" (*z*). It has been

(*g*) *Ex parte Hill, In re Lane*, L. R. 17 Q. B. D. 74.

(*r*) 45 & 46 Vict. c. 43, ss. 3, 9.

(*s*) 41 & 42 Vict. c. 31, s. 4, *ante*, p. 63; and see s. 3, and *per* Lord Esher, M.R., in *Ex parte Parsons, In re Townsend*, L. R. 16 Q. B. D. 543, explained in *Ex parte Hubbard, In re Hardwick*, 17 Q. B. D. 690.

(*t*) 41 & 42 Vict. c. 31, ss. 8, 10; s. 10, § 1, is repealed by 45 & 46 Vict.

c. 43, s. 10, as regards securities for payment of money. See *Swift v. Pannell*, L. R. 24 Ch. D. 210.

(*u*) 41 & 42 Vict. c. 31, s. 8.

(*x*) *Ib*.

(*y*) *Per* James, L.J., *Ex parte Chalmor*, L. R. 16 Ch. D. 265.

(*z*) 45 & 46 Vict. c. 43, s. 8. The addition of the word 'truly' makes no difference: *Ex parte Nelson, In re Hockaday*, W. N. (1887), 7.

questioned in many cases whether there has been a true setting forth of the consideration: the principle to be extracted from the numerous decisions seems to be that it is sufficient if the statement is substantially accurate, if its true legal effect, or its true business effect, is stated (*a*), although what took place is not stated in precise detail (*b*). Therefore a collateral stipulation as to the application of the consideration need not be set forth; for instance, that it should be applied to the satisfaction of an antecedent debt (*c*). Nor need the money have been in fact advanced at the time; for instance, where the bill of sale is given against an antecedent debt, which is, however, treated as a present advance in the expression of the consideration (*d*), or where the bill of sale is given in place of a prior one which has not been in accordance with the prescribed form, and the money is expressed to be “now paid” (*e*); or where the bill of sale is by way of security for any monies the grantee may be called upon to pay in respect of a guarantee (*f*). On the other hand, it has been held that the consideration was not truly set forth where it was expressed to be a sum advanced upon execution to the grantor, whereas, in fact, only part was paid to him and part was retained by the grantee for interest and expenses, or commission and expenses (*g*); similarly where it was

(*a*) *Ex parte Johnson*, L. R. 26 Ch. D. 348, *per* Bowen, L.J.

(*b*) *Ex parte Johnson*, L. R. 26 Ch. D. 345, *per* Cotton, L.J.

(*c*) *Ex parte National Mercantile Bank*, L. R. 15 Ch. D. 42; *Hamlyn v. Betteley*, 5 C. P. D. 327; *Ex parte Challinor*, 16 Ch. D. 260. See *Ex parte Firth*, *per* Jessel, M.R., 19 Ch. D. 428.

(*d*) *Credit Co. v. Pott*, L. R. 6 Q. B. D. 295; *Ex parte Bolland*, 21 Ch. D.

543; *Ex parte Johnson*, 26 Ch. D. 338; *Ex parte Nelson*, *In re Hockaday*, W. N. (1887), 7.

(*e*) *Ex parte Allam*, *In re Munday*, L. R. 14 Q. B. D. 43.

(*f*) *Hughes v. Little*, L. R. 18 Q. B. D. 32; but it will, notwithstanding, be bad if not according to prescribed form. *Ante*, p. 72.

(*g*) *Ex parte Charing Cross Advance & Deposit Bank*, L. R. 16 Ch. D. 35; *Hamilton v. Chaîne*, 7 Q. B. D. 319;

Chap. III.

expressed to be £50 paid at or before the execution, when in fact £25 only was paid, and the grantee undertook to pay the balance for rent to the grantor's landlord when due (*h*).

Priority.

In case two or more bills of sale are given comprising in whole or in part any of the same chattels, they will have priority in the order of the date of their registration (*i*) ; and, as regards bills of sale under the Act of 1878, a bill of sale attested and registered will take priority over one that is earlier but unregistered (*k*). A transfer or assignment of a registered bill of sale, as already stated (*l*), need not be registered (*m*) ; and there is no distinction in this respect between a bill of sale by way of security, upon which an equity of redemption is reserved, and an absolute bill of sale, between an equitable transfer and a legal one (*n*).

Entry of satisfaction.

Where the debt for which a bill of sale was made or given has been satisfied or discharged, the registrar may order a memorandum of satisfaction to be written upon any registered copy of it, on the consent of the person entitled to the benefit of the bill of sale, or on proof that the debt has been satisfied or discharged (*o*).

II. Pawn or pledge.

A special property may be given upon the transfer of goods or chattels, while the general property in them is retained. This takes place where they are delivered to another as a pawn or pledge (*p*), to be a security for the payment of a debt by the pawnor or bailor (*q*) : unlike the

Ex parte Firth, 19 Ch. D. 419. But see *In re Cann*, 13 Q. B. D. 36 ; *Davis v. Usher*, 12 Q. B. D. 490.

(*h*) *Ex parte Rolph, In re Spindler*, L. R. 19 Ch. D. 98.

(*i*) 41 & 42 Vict. c. 31, s. 10 ; 45 & 46 Vict. c. 43, s. 3.

(*k*) *Conelly v. Steer*, L. R. 7 Q. B. D. 521.

(*l*) *Ante*, p. 65.

(*m*) 41 & 42 Vict. c. 31, s. 10 ; 45 &

46 Vict. c. 43, s. 3.

(*n*) *Ex parte Turquand, In re Parker*, L. R. 14 Q. B. D. 636, 644.

(*o*) 41 & 42 Vict. c. 31, ss. 15, 21 ; R. S. C. (1883), Ord. LXI., 26, 27.

(*p*) For earliest recorded instance of a pledge, see Gen. xxxviii., 17, 18, where Tamar took a pledge of Judah.

(*q*) Said to be derived from *bailler*, Fr. 'to deliver.'

case of a mortgage, delivery to the creditor is essential; Chap. III. but it is sufficient if there be a constructive delivery (*r*). Lord Holt, C.J., thus explained (1) what property the pawnee has in the pawn or pledge, and (2) what is his liability in respect of it (*s*):—

“As to the *first*, he has a special property, for the pawn is a securing to the pawnee, that he shall be repaid his debt and to compel the pawnor to pay him. But if the pawn be such as it will be the worse for using, the pawnee cannot use it, as clothes, &c.; but if it be such as will be never the worse, as if jewels for the purpose were pawned to a lady, she might use them: but then she must do it at her peril; for whereas, if she keeps them locked up in her cabinet, if her cabinet should be broken open, and the jewels taken from thence, she would be excused; if she wears them abroad, and is there robbed of them, she will be answerable. And the reason is, because the pawn is in the nature of a deposit, and, as such, is not liable to be used. But if the pawn be of such a nature, as the pawnee is at any charge about the thing pawned, to maintain it, as a horse, cow, &c., then the pawnee may use the horse in a reasonable manner, or milk the cow, &c., in recompense for the meat As to the second point: in effect if a creditor takes a pawn, he is bound to restore it upon the payment of the debt; but yet it is sufficient, if the pawnee use true diligence, and he will be indemnified in so doing, and notwithstanding the loss, yet he shall resort to the pawnor for his debt But, indeed, if the money for which the goods were pawned be tendered to the pawnee before they are lost, then the pawnee shall be answerable for them; because the pawnee, by detaining them after the tender of the money, is a wrong-doer, and is a wrongful detainer of the goods, and the special property of the pawnee is determined. And a man that keeps goods by wrong must be answerable for them at all events; for the detaining of them by him is the reason of the loss.”

(*r*) *Meyerstein v. Barber*, L. R. 2 C. P. 52.

(*s*) *Coggs v. Bernard*, Raymond, 909; 1 Sm. L. Ca. 211.

Chap. III.

If the pawnor make default at the stipulated time for payment of the debt, the pawnee has a right to sell the pawn; and if there is no stipulated time, then he may sell after due demand and notice to the pawnor (*t*). The pawnbroker's interest in the pawn is alienable, and may be seized in execution by the sheriff (*tt*).

A pawn or pledge is not within the Bills of Sale Acts, although accompanied by a contemporaneous document signed by the pawnor or pledgor recording the transaction, and regulating the rights of the pawnee or pledgee as to the sale of the goods (*u*).

Pawnbrokers
Act, 1872.

Many statutory provisions have been made with regard to pawnbrokers or professed money-lenders, beginning with 1 Jac. 1, c. 21; but these have all been superseded by the Pawnbrokers Act, 1872 (*x*). The Act applies (*a*) to every loan by a pawnbroker of forty shillings or under, and (*β*) to every loan by a pawnbroker of above forty shillings and not above ten pounds, except in the case of a special contract as authorised by the Act between the pawnor and pawnbroker at the time of the pawning (*y*). Besides general regulations for the carrying on of the business, including a scale of profits and charges, the Act provides that every pledge shall be redeemable within twelve months from the day of pawning and seven days of grace (*z*). If the pledge have been for ten shillings or under, and have not been redeemed within that time, it becomes the pawnbroker's absolute property (*a*); but if for above ten shillings,

(*t*) Notes to *Coggs v. Bernard*, 1 Sm. L. Ca. 227. See *Ex parte Hubbard, In re Hardwick*, L. R. 17 Q. B. D. 698, per Bowen, L.J.

(*tt*) *In re Rollason*, L. R. 34 Ch. D. 495; see post, ch. xi., I.

(*u*) *Ex parte Hubbard, In re Hardwick*, L. R. 17 Q. B. D. 690.

(*x*) 35 & 36 Vict. c. 93.

(*y*) 35 & 36 Vict. c. 93, ss. 10, 24.

(*z*) S. 16.

(*a*) S. 17.

it remains redeemable until disposed of (*b*), and such disposition must be by sale by auction and otherwise as prescribed by the Act (*c*). The pawnor is protected against loss by fire, or by depreciation in value of the pledge through the pawnbroker's default (*d*). Chap. III.

For the protection of a certain class of pawnees the Factors Acts, 1823 to 1877, were passed (*e*). Although advances on the security of goods and merchandise had become an usual and ordinary course of business; and although such goods were largely entrusted to factors or agents for sale, a factor could not bind or affect the property of his principal by a pledge (*f*). By the above Acts, *bonâ fide* advances to any agent entrusted with the possession of goods, or of the documents of title to them, on the security of such goods or documents, are made good against the owner of the goods and all others interested in them, notwithstanding the person claiming the pledge had notice of the agency (*g*); and where any agent or person continues in the possession of such goods or documents, any revocation of his entrustment or agency is not to prejudice or affect the title or rights of any other person who, without notice of such revocation, purchases or makes advances upon the faith or security of such goods or documents (*h*). Factors Acts,
1823 to 1877.

The different sorts of 'bailment,' by which the possession of goods may be transferred by the owner while the general property in them remains in him, were thus classified by Lord Holt in the judgment already quoted from (*i*):— III. Bailment.

(*b*) 35 & 36 Vict. c. 93, s. 18.

(*c*) S. 19.

(*d*) SS. 27, 28.

(*e*) 4 Geo. IV. c. 83; 6 Geo. IV. c. 94; 5 & 6 Vict. c. 39; 40 & 41 Vict. c. 39.

(*f*) See Turner's Contract of Pawn, p. 13.

(*g*) 5 & 6 Vict. c. 39, s. 1.

(*h*) 40 & 41 Vict. c. 39, s. 2.

(*i*) *Coggs v. Bernard*, Raym. 909; 1 Sm. L. Ca. 211.

Chap. III.

Six sorts.

1. *Depositum*, a bare naked bailment of goods, delivered by one man to another to keep for the use of the bailor.

2. *Commodatum*, when goods or chattels that are useful are lent to a friend *gratis*, to be used by him.

3. *Locatio et conductio*, when goods are left with the bailee to be used by him for hire.

4. *Vadium*, pawn or pledge.

5. *Locatio operis faciendi*, when goods or chattels are delivered to be carried, or something to be done about them, for a reward to be paid by the person who delivers them to the bailee.

6. *Mandatum*, when there is a delivery of goods or chattels to somebody who is to carry them, or do something about them *gratis*, without any reward.

We have seen Lord Holt's statement of the bailee's liability in the case of pawn; in the other cases he stated it to be as follows:—As to the first sort, *depositum*, the bailee is not answerable if they are stolen without any fault in him, neither will a common neglect make him chargeable, but he must be guilty of some gross neglect. As to the second, *commodatum*, he is bound to the strictest care and diligence to keep the goods, so as to restore them back again to the lender; because the bailee has a benefit by the use of them, so as if he be guilty of the least neglect, he will be answerable. As to the third, *locatio et conductio*, he is also bound to take the utmost care, and to return the goods when the time of hiring has expired. As to the fifth, *locatio operis faciendi*, these cases are of two sorts, either a delivery to one that exercises a public employment, or a delivery to a private person: (1) if it be to a person of the first sort, he is bound to answer for the goods at all events; that is the case of the common carrier, master of a ship, &c. The law charges the person thus

entrusted to carry goods, against all events but acts of Chap. III. God and the enemies of the Crown; for though the force be never so great, as if an irresistible multitude of people should rob him, nevertheless he is chargeable. This is contrived by the policy of the law, for the safety of all persons, the necessity of whose affairs oblige them to trust these sorts of persons, that they may be safe in their ways of dealing (*k*). (2.) If the delivery be to a person of the second sort, as bailies, factors, and such like, he is only to do the best he can; if he receives his master's money and keeps it locked up with reasonable care, he shall not be answerable for it, though it be stolen; for it would be unreasonable to charge him with a trust further than the nature of the thing puts in his power to perform it. As to the sixth sort of bailment, *mandatum*, if the bailee behave himself negligently, he is answerable; for the owner's trusting him with the goods is a sufficient consideration to oblige him to a careful management.

It will be observed that in the first sort of bailment the bailee was said by Lord Holt to be liable only for 'gross' negligence. This has given rise to some difficulty: it would seem to mean that the bailee is not liable unless he fails to exercise such degree of skill as he possesses (*l*). One Judge has said he could see no difference between 'negligence' and 'gross negligence,' "it is the same thing with the addition of a vituperative epithet" (*m*). A deposi-
tary has no right to use the thing entrusted to him (*n*).

When a man finds goods belonging to another, he seems Goods found.

(*k*) As to who is a common carrier, see *Nugent v. Smith*, L. R. 1 C. P. D. 423.

(*l*) Per Willes, J., in *Lord v. Midland Rail. Co.*, L. R. 2 C. P. 344.

(*m*) Per Rolfe, B., in *Wilson v. Brett*, 11 M. & W. 115. See "Railway Passengers" (by the Author), 93 (*l*).

(*n*) *Clark v. Gilbert*, 2 Bing. N. C. 356.

Chap. III. bound, after he has taken them into his possession, to the same degree of care with a depository (o).

Action for
conversion or
detention.

Any dealing with the chattels by a bailee inconsistent with the purposes of the bailment, or the ownership of the bailor, rendered the bailee liable at law to damages in an action for conversion; and in like manner any one wrongfully detaining goods, however he became possessed of them, from the person entitled to the possession of them, was liable to an action for their recovery and for damages for their detention. In the latter case the defendant had it in his power, if he chose, to retain the article upon payment of the value as assessed by the jury. In equity alone could a plaintiff obtain return of the specific chattel. But now the High Court or a Judge can order that execution shall issue for the delivery of the property, without giving the defendant any option of retaining it; but with an option to the plaintiff, if the property cannot be found, to have the value (p). Also in actions brought in the County Court, where the value of the goods does not exceed 50*l.*, the Judges have power to make similar orders (q). When the full value of the goods has been recovered, the property in them will thereby be divested from the plaintiff, but not otherwise (r).

IV. Lien.

Akin to pawn is 'lien,' which subjects chattels belonging to the debtor to the claim of his creditor, for in both cases the possession of the chattel which is essential, is in one and the property in it is in another; it has been defined to be "a right which a person has to retain that

(o) Notes to *Coggs v. Bernard*, 1 Sm. L. Ca. 225.

(p) R. S. C. Ord. XLVIII., following C. L. Pro. Act, 1854 (17 & 18 Vict. c. 125), s. 78. See *post*, p. 229.

(q) *Taylor v. Addyman*, 13 C. B.

309; C. C. R. 1886, Ord. XXV. r. 50. See *post*, p. 230.

(r) *Ex parte Drake, In re Ware*, L. R. 5 Ch. D. 866; *Brinsmead v. Harrison*, 6 C. P. 584.

which is lawfully in his possession belonging to another Chap. III. till certain pecuniary demands of him, the person in possession, are satisfied" (s). But, unlike pawn, lien confers no power of sale at common law; on the contrary sale would destroy the lien, and render the vendor liable for the value of the chattel sold, even although the chattel could not be returned without expense; for instance, horses left at an inn by a guest who had gone away without paying his bill (t). For the relief of innkeepers, however, the Innkeepers Act, 1878 (u), was passed, whereby the legislature conferred upon them, in addition to their ordinary lien, the right to sell by public auction any goods, chattels, carriages, horses, wares, or merchandise, which may have been deposited with them or left in the house, coachhouse, or premises, where the person depositing or leaving them shall be indebted for any board or lodging or the keep and expenses of any animals, after they shall have been there for six weeks without such debt having been paid or satisfied.

There are two species of liens, viz., Particular and General. Particular—
general.

Particular liens are where persons claim to retain the goods in respect of which the debt arises; for instance, the lien of a carrier for the carriage of the goods: these are said to be favoured by the law. General liens are in respect of a general balance of account; for instance, where advances are made, as is usual in certain trades, by the agent to the principal; these, it is said, are to be taken strictly (x).

Lien may arise at law, for instance, where goods have been entrusted to another for something to be done by him

(s) Notes to *Chase v. Westmore*, Tudor's L. Ca. in Merc. Law, 363.

(t) *Mulliner v. Florence*, L. R. 3 Q. B. D. 484; *Jacobs v. Latour*, 5 Bing. 130.

(u) 41 & 42 Vict. c. 38.

(x) See Smith's Mercantile Law, bk. iv. ch. 2; and Fisher on Mortgages, ch. 2.

Chap. III.

to or in respect of them, as corn to a miller, a vessel to a shipwright, goods to a carrier or innkeeper; or it may arise by special agreement or by usage (*y*).

A Rule of the Supreme Court has been made for the protection of all parties, where in an action for the recovery of specific personal property the party from whom it is sought to recover it claims to retain it by virtue of a lien, empowering the Court or a Judge to order the party claiming to recover it to pay into Court, to abide the event, the amount in respect of which the lien is claimed, and that upon such payment the property be delivered up to the party claiming it (*z*).

Solicitor's
lien.

Also a solicitor has a lien for his general balance on papers of his clients which come to his hands in the course of his professional employment; such right is only commensurate with the right which the party delivering the papers to him has therein (*a*). But he cannot by way of enforcing payment "sit upon" the papers and embarrass the prosecution of an action or proceeding, to the injury of other persons; he will be ordered to produce them without prejudice to his lien, or, if the amount be paid into Court, they will be freed from his lien (*b*). A solicitor's lien for his costs extends to judgments recovered; also by the Solicitors Act, 1860, provision is made for securing to solicitors payment of their costs by enabling them through a Judge's order to obtain a charge upon the property "recovered or preserved" in any action or proceeding (*c*).

(*y*) Smith's Mercantile Law, bk. iv. ch. 2. And see *Kruger v. Wilcox*, and *Chase v. Westmore*, and notes, in Tudor's L. Ca. on Merc. Law, 353.

(*z*) R. S. C. Ord. L. r. 8.

(*a*) Selwyn's Nisi Prius, vol. ii. 1315.

(*b*) *Belaney v. Ffrench*, L. R. 8 Ch. Ap. 918. See *In re Capital Fire In-*

surance Association, 24 Ch. D. 408. See also R. S. C. Ord. L. r. 8; *In re Galland*, 31 Ch. D. 296.

(*c*) 23 & 24 Vict. c. 127, s. 28. As to what is and what is not such property, see *Greer v. Young*, L. R. 24 Ch. D. 545; *Emden v. Carte*, 19 Ch. D. 311; *Pinkerton v. Easton*, 16 Eq. 490.

CHAPTER IV.

Chap. IV.CHOSSES IN POSSESSION (*continued*).

THERE is one class of choses in possession, namely Ships, subject to special laws, which are contained in the Merchant Shipping Acts, 1854 to 1883 (*a*), the prior Acts having been repealed (*b*). With regard to the ownership of British ships the Merchant Shipping Act, 1854 (*c*), provides :—

Ships.
Merchant
Shipping
Acts, 1854 to
1883.

S. 18. “No ship shall be deemed to be a British ship, unless she belongs wholly to owners of the following description ; that is to say,

“ (1.) Natural-born British subjects :

“Provided that no natural-born subject who has taken the oath of allegiance to any foreign sovereign or state shall be entitled to be such owner as aforesaid, unless he has subsequently to taking such last-mentioned oath taken the oath of allegiance to Her Majesty, and is and continues to be during the whole period of his so being an owner resident in some place within Her Majesty’s dominions, or if not so resident, member of a British factory or partner in a house actually carrying on business in the United Kingdom or in some other place within Her Majesty’s dominions :

(*a*) 17 & 18 Vict. c. 104 ; 18 & 19 Vict. c. 91 ; 25 & 26 Vict. c. 63 ; 30 & 31 Vict. c. 124 ; 31 & 32 Vict. c. 129 ; 32 Vict. c. 11 ; 34 & 35 Vict. c. 110 ; 35 & 36 Vict. c. 73 ; 36 & 37 Vict. c. 85 ; 39 & 40 Vict. c. 80 ; 43 & 44 Vict. c. 18 ; *id.* c. 22 ; *id.* c. 43 ; 46 & 47 Vict. c. 41. It may be thought it would be well to repeal all these, and to substitute one Act in their place.

(*b*) 17 & 18 Vict. c. 120.

(*c*) 17 & 18 Vict. c. 104, s. 18.

Chap. IV.

“(2.) Persons made denizens by Letters of Denization, or naturalised by or pursuant to any Act of the Imperial Legislature, or by or pursuant to any Act or ordinance of the proper legislative authority in any British possession :

“Provided that such persons are and continue to be during the whole period of their so being owners resident in some place within Her Majesty’s dominions, or if not so resident members of a British factory or partners in a house carrying actually on business in the United Kingdom or in some other place within Her Majesty’s dominions, and have taken the oath of allegiance to Her Majesty subsequently to the period of their being so made denizens or naturalised :

“(3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom or some British possession.”

Aliens.

The Naturalisation Act, 1870 (d), which enabled an alien to take, acquire, hold, and dispose of, real and personal property of every description, specially excepted an alien from being qualified to be the owner of a British ship (e).

Registration.

Every British ship must be registered, with the exception of some small vessels not exceeding 15 or 30 tons burden specially employed as in the Act mentioned (f).

No ship required to be registered will, unless registered, be recognised as a British ship ; and no officer of Customs may grant a clearance or transire to any such ship for the purpose of enabling her to proceed to sea as a British ship,

(d) 33 Vict. c. 14 ; amended by 33 & 34 Vict. c. 102, and 35 & 36 Vict. c. 39. See M. L. R. P. 106.

(e) 33 Vict. c. 14, s. 14.

(f) 17 & 18 Vict. c. 104, s. 19.

Chap. IV.

unless the master of such ship, upon being required, produces the certificate of registry ; and, if such ship attempts to proceed to sea as a British ship without a clearance or *transire*, such officer may detain such ship until such certificate is produced to him (*g*).

With respect to entries in the register book, the property Shares.
in a ship is to be divided into 64 shares : not more than 64 individuals (formerly 32 (*h*)) are to be registered at the same time as owners of any one ship ; but this rule does not affect the beneficial title of any number of persons of any company represented by, or claiming under, any registered owner or joint owner : no person is to be registered as owner of any fractional part of a share ; but any number of persons not exceeding five may be registered as joint owners of a ship, or of a share or shares therein, and joint owners are to be considered as one person only and are not to be entitled to dispose in severalty of any interest : a body corporate may be registered as owner by its corporate name (*i*). No person is to be registered as owner of a ship, or any share therein, until he has made and subscribed the declaration prescribed by the Act (*k*) ; and no body corporate is to be so registered until the secretary, or other duly appointed public officer, has made the prescribed declaration (*l*).

No notice of any trust, express, implied, or constructive, Trusts.
is to be entered in the register book or receivable by the registrar ; and, subject to any rights and powers appearing by the register book to be vested in any other party, the registered owner of any ship or share therein has power

(*g*) 17 & 18 Vict. c. 104, s. 19.

(*h*) S. 37 (2).

(*i*) S. 37, and 43 & 44 Vict. c. 18.

(*k*) 17 & 18 Vict. c. 104, s. 38.

(*l*) S. 39.

Chap. IV.

absolutely to dispose of such ship or share, and to give effectual receipts for money paid or advanced by way of consideration (*m*). But equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property (*mm*).

Transfer.

A registered ship or share therein must be transferred by bill of sale according to prescribed form, executed by the transferor in the presence of and attested by one or more witnesses (*n*). It will be remembered that transfers or assignments of a ship or vessel or any share thereof are not included in the Bills of Sale Act, 1878 (*o*). The transferee must make and subscribe the prescribed declaration (*p*), and the bill of sale when duly executed must be produced to the registrar of the port at which the ship is registered, and the registrar will enter in the register book the name of the transferee, and endorse the bill of sale; all bills of sale are to be entered in the order of their production to the registrar (*q*).

Transmission of shares.

If the property in any ship, or share therein, becomes transmitted in consequence of the death, or bankruptcy, of any registered owner, or in consequence of the marriage of any female registered owner, or by any lawful means other than by a transfer, such transmission must be authenticated by a declaration of the person to whom such property has been transmitted, in prescribed form, &c., accompanied by the prescribed evidence; and the registrar shall enter the name of the person or persons entitled, and such persons, if more than one, shall, however numerous, be considered as

(*m*) 17 & 18 Vict. c. 104, s. 43.(*mm*) 25 & 26 Vict. c. 63, s. 3.(*n*) 17 & 18 Vict. c. 104, s. 55; 18 & 19 Vict. c. 91, s. 11.(*o*) 41 & 42 Vict. c. 31, s. 4; *ante*, p. 63.(*p*) 17 & 18 Vict. c. 104, s. 56.(*q*) S. 57.

one person only as regards the rule relating to the number Chap. IV.
of persons entitled to be registered as owners (*r*).

A mortgage of a registered ship, or share therein, must Mortgages.
be in prescribed form, and on production the registrar of the port at which the ship is registered shall record it in the register book; and every such mortgage is to be recorded in the order of time in which it is produced to him for that purpose. If there is more than one mortgage registered, the mortgagees are notwithstanding entitled to priority according to the date of registration (*s*). Provision is made for entry of the discharge of a mortgage (*t*), for transfer of mortgages (*u*), for sale by mortgagees (*x*), and for the transmission of the interest of a mortgagee in consequence of death or bankruptcy, or in consequence of the marriage of a female mortgagee, or by any lawful means other than by a transfer (*y*).

Any registered owner, desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered, at any place out of the country or possession in which the port of registry of such ship is situate, may obtain from the registrar a certificate of mortgage or certificate of sale, as prescribed, enabling him to mortgage or sell the ship or his share therein (*z*). Certificate of mortgage or of sale.

Whenever a registered ship is so altered as not to correspond to the particulars in the register book, the alteration must be noted on the book of registry, or the registrar may require the ship to be registered anew (*a*). Also upon any change of ownership in any ship, if the owner or owners desire to have the ship registered anew, the registrar at Reregistration.

(*r*) Ss. 58—60.

(*s*) 17 & 18 Vict. c. 104, ss. 66, 67,

69.

(*t*) S. 68.

(*u*) S. 73.

(*x*) S. 71.

(*y*) Ss. 74, 75. See ss. 58—60.

(*z*) Ss. 76—83.

(*a*) Ss. 84—87.

Chap. IV. the port at which the ship is already registered, is empowered to make such registry anew (*b*).

Transfer of registry.

The registry of any ship may be transferred from one port to another, upon the application of all parties appearing on the register to be interested in such ship, whether as owners or mortgagees, in manner prescribed (*c*).

Charter-party.

The agreement by which a shipowner agrees to place an entire ship, or a part of it, at the disposal of a merchant for the conveyance of goods, binding the shipowner to transport them to a particular place for a sum of money which the merchant undertakes to pay as freight for their carriage, is termed the 'charter-party' (*d*). The term is said to be a corruption of the Latin words *charta partita*; the two parts being usually written in former times on one piece of parchment, which was afterwards divided by a straight line cut through some word or figure, so that one part should fit and tally with the other (*e*). Charter-parties are not now usually by deed: they embody the terms upon which the shipowner lends the use of the ship, and contain stipulations as to the rate of remuneration, the nature of the voyage, and the time and mode of employing the vessel (*f*).

Bill of lading.

Where a ship is not chartered wholly to one person, but the owners offer her generally to carry the goods of any merchants who may choose to employ her, or where one merchant to whom she is chartered offers her to several sub-freighters for the conveyance of their goods, she is called a 'general ship.' In these cases the contract entered into by and with the owners, or the master on their behalf,

(*b*) 17 & 18 Vict. c. 104, s. 88.

(*c*) Ss. 89—91.

(*d*) Maude & Pollock, 289.

(*e*) Abbot's Law of Shipping, 175.

(*f*) Maude & Pollock, 290.

is evidenced by a 'bill of lading.' As there is great convenience in having a bill of lading, even in cases where the ship is chartered wholly to one person by whom the whole cargo has been shipped, it seldom happens in any case that the goods are shipped without a bill of lading (*g*). Chap. IV.

(*g*) Maude & Pollock, 338. The definitions or explanations of 'charter-party' and 'bill of lading' are borrowed from Maude & Pollock, to which work the reader is referred for further information on the law of merchant shipping.

Chap. V.

CHAPTER V.

INCORPOREAL THINGS—CHOSSES IN ACTION.

Nature of.



PROPERTY in action has been defined by Blackstone (a) as such where a man hath not the occupation, but merely a bare right to occupy the thing in question; the possession whereof, may however, be recovered by a suit or action at law: from whence the thing so recoverable is called a thing, or *choses*, in action. He adds:—

“ Thus, money due on a bond is a chose in action; for a property in the debt vests at the time of forfeiture mentioned in the obligation, but there is no possession till recovered by course of law. If a man promises, or covenants with me, to do any act, and fails in it, whereby I suffer damage; the recompense for this damage is a chose in action: for though a right to some recompense vests in me, at the time of the damage done, yet what and how large such recompense shall be, can only be ascertained by verdict; and the possession can only be given me by legal judgment and execution. . . . Upon all contracts or promises, either express or implied, and the infinite variety of cases into which they are and may be spun out, the law gives an action of some sort or other to the party injured in case of non-performance; to compel the wrong-doer to do justice to the party with whom he has contracted, and, on failure of performing the identical thing he engaged to do, to render a satisfaction equivalent to the damage sustained. But while the thing, or its equivalent, remains in suspense, and the injured party has only the right and not the occupation, it is called a chose in action; being a thing rather *in potentia* than *in esse*: though the owner may have as absolute a property of such things in action, as of things in possession ” (b).

(a) Vol. ii. 396.

(b) *Ib.*, 397, 398.

The law also gives a right of action to a party who receives damage from the wrongful act of another, although it arise not from the breach of a contract, express or implied, but is a wrong in itself, or as it is termed a 'tort.' Such incorporeal right is also a chose in action.

By the common law a chose in action was not assignable, except by or to the king; "the great wisdom and policy of the sages and founders of our law having so provided," according to Lord Coke, for that assignment to strangers would be "the occasion of multiplying of contentions and suits, of great oppression of the people, and the subversion of the due and equal execution of justice" (c). But "this nicety," as Blackstone calls it, was disregarded; although, in compliance with the ancient principle, the form of assigning a chose in action was in the nature of a declaration of trust, and an agreement to permit the assignee to make use of the name of the assignor, in order to recover the possession. Therefore when a debt or bond was said to be assigned over, it had still to be sued in the original creditor's name; the person to whom it was transferred being rather an attorney than an assignee (d). In fact a power of attorney was given by the assignor to the assignee authorising him (the assignee) to sue in his (the assignor's) name (e). Negotiable instruments and some few other securities (of which hereafter), were an exception; and also if the debtor assented to the transfer, then the right of the assignee was complete at law, so that he might maintain a direct action against the debtor upon the implied promise to pay him, resulting from such assent (f).

Alienation
at law.

(c) *Lampet's Case*, 10 Co. 48.

(d) Bl. vol. ii. 442.

(e) See 2 Da. i. 648 (4th ed.), for form of power of attorney to get in debts on sale of goodwill of a busi-

ness; and 2 Da. ii. 725, in a mortgage of a debt.

(f) Story's Equity Jurisprudence, § 1039.

Chap. V.
In equity.

But from an early period assignments of a chose in action for valuable consideration have been held valid in Courts of Equity, which have carried them into effect upon the same principle as they enforced the performance of an agreement when not contrary to their own rules or to public policy (*g*).

“An assignment,” says Lord Hardwicke, “always operates by way of agreement or contract; amounting in the consideration of this Court to this, that one agrees with another to transfer, and make good that right or interest; which is made good here by way of agreement” (*h*).

In other words, as Mr. Justice Story puts it :—

“Every such assignment is considered in equity as in its nature amounting to a declaration of trust and to an agreement to permit the assignee to make use of the name of the assignor in order to recover the debt, or to reduce the property into possession” (*i*).

(Choses in equity.)

Also where an equitable assignment was made of property recoverable in Courts of Equity, hence called *choses* in equity, such as the beneficial interest in personalty under a will or intestacy, stock standing in the names of trustees, or in the Court of Chancery, money in Court, judgments enforceable in equity, the beneficial interest in a legal debt assigned to trustees, the assignee could sue in his own name in equity for such property (*j*).

Assignments
against public
policy.

But a Court of equity will not, any more than a Court of law, give effect to assignments which are considered contrary to the principles of public policy; for instance, an

(*g*) Notes to *Ryall v. Rowles*, White & Tudor's L. Ca. in Eq. vol. ii. 837.

(*h*) *Wright v. Wright*, 1 Ves. sen. 411.

(*i*) Story's Equity Jurisprudence, § 1040.

(*j*) Notes to *Ryall v. Rowles*, White & Tudor's L. Ca. in Eq. vol. ii. 837.

assignment by an officer of his commission, which is a Chap. V.
 personal trust, or of his full pay or half pay (*k*), which is in Pensions.
 fact given him to enable him to keep up his position as an
 officer of the army (*l*); but the pension of a retired officer,
 whether naval, military, or civil, is alienable where not
 made inalienable by statute.

Nor, on the same principle, will effect be given to assign- Maintenance
 ments which partake of the nature of 'maintenance,' or and
 'champerty.' Says Blackstone (*m*):— champerty.

"Maintenance is an officious intermeddling in a suit that no
 way belongs to one, by maintaining or assisting either party with
 money or otherwise, to prosecute or defend it: a practice that
 was greatly encouraged by the first introduction of uses. This is
 an offence against public justice, as it keeps alive strife and con-
 tention, and perverts the remedial process of the law into an
 engine of oppression. . . . A man may, however, maintain
 the suit of his near kinsman, servant, or poor neighbour, out
 of charity (*n*) and compassion, with impunity."

And again:—

"Champerty, *campi partitio*, is a species of maintenance, and
 punished in the same manner: being a bargain with a plaintiff or
 defendant *campum partire*, to divide the land or other matter sued
 for between them, if they prevail at law; whereupon the cham-
 pertor is to carry on the party's suit at his own expense. Thus
champart, in the French law, signifies a similar division of profits,
 being a part of the crop annually due to the landlord by bargain
 or custom. In our sense of the word, it signifies the purchasing
 of a suit, or right of suing: a practice so much abhorred by our
 law, that it is one main reason why a chose in action, or thing of

(*k*) Story's Equity Jurisprudence,
 § 1040 (*e*)—(*g*); and see notes to
Ryall v. Rowles, 893—897.

(*l*) *Lucas v. Harris*, L. R. 18 Q. B.
 D. 127. See *per Lindley*, L.J., 135.
 And see *Ex parte Webber*, *ib.* 111.

(*m*) Vol. iv. 134. See *Bradlaugh v.*
Newdegate, L. R. 11 Q. B. D. 1—the
 most recent case of maintenance.

(*n*) For example, see *Harris v.*
Brisco, L. R. 17 Q. B. D. 504.

Chap. V. which one hath the right but not the possession, is not assignable at common law; because no man should purchase any pretence to sue in another's right."

So an assignment of a bare right to bring an action in equity for a fraud committed upon the assignor, will be held void as contrary to public policy and as savouring of the character of maintenance; and a mere right of action for a tort is not, for the like reason, assignable (o).

To an assignment in equity no special form is necessary (p); and it may be by parol as well as by deed (q).

Assignment
subject to
equities.

The assignee is generally entitled to all the remedies of the assignor (r), and is generally subject to all the equities which subsist against the chose in action, whether it be a debt, or an obligation, or a trust fund (s). For instance, the assignment of money to come to the assignor under a building contract will be subject to the conditions of the contract (t): the assignment of a debt will be subject to any payments which have been made at the date of assignment (u): the assignee of a bond will take it subject to any right of set-off which the obligor, or person bound, had against the assignor (x).

Future
property.

In equity there may be an assignment of property not yet in existence, but to arise hereafter, provided the property is sufficiently specified (y), as of debts to arise

(o) Story's Equity Jurisprudence, § 1040 (h).

(p) *Row v. Dawson*, 1 Ves. 331.

(q) *Tibbits v. George*, 5 Ad. & El. 115.

(r) Story's Equity Jurisprudence, § 1047 (a).

(s) Story's Equity Jurisprudence, § 1047; and notes to *Ryall v. Rowles*, White & Tudor's L. Ca. in Eq. vol ii. 879. For instances where the rule

has been held not to apply, see *In re Agra & Masterman's Bank*, L. R. 2 Ch. Ap. 391; and *In re Blakely Ordnance Co.*, 3 Ch. Ap. 154.

(t) *Tooth v. Hallett*, L. R. 4 Ch. Ap. 242. See *Ex parte Moss*, *In re Toward*, 14 Q. B. D. 310.

(u) *Ord v. White*, 3 Bea. 357.

(x) *Cavendish v. Geaves*, 24 Bea. 163.

(y) *Holroyd v. Marshall*, 10 H. of L. C. 191; 33 L. J. (Ch.), 193.

in a particular business: it is impossible, in the proper sense of the term, to assign a non-existing thing, either at law or in equity, but there may be an agreement to assign property when it arises, of which a court of equity would decree specific performance, and that is called an equitable assignment (z).

In order to perfect his title against the debtor, the assignee should immediately give him notice of the assignment; for otherwise a priority of right may be obtained by a subsequent assignee, or the debt may be discharged by a payment to the assignor before such notice (a). Similarly, where choses in equity are assigned, notice of the assignment should be given to the trustees or other persons holding the funds.

Notice.

With regard to the choses in action following, namely:

Married
Women's
Property
Act, 1882.

“All deposits in any post-office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society,”—

(1) which were on January 1st, 1883, standing in the sole name of a married woman, or (2) which thereafter shall be made to be so, or (3) which at or after such date were, or shall be made to be, standing in the name of a married woman jointly with any person or persons other than her

(z) *Ib.*; and *Official Receiver v. § 1047. See notes to Ryall v. Rowles, Tailby*, L. R. 18 Q. B. D. 25. *White & Tudor's L. Ca. in Eq. vol. ii.*
(a) *Story's Equity Jurisprudence*, 848.

Chap. V. husband, provision is made by the Married Women's Property Act, 1882, for the transfer and receipt of the same, and the dividends thereon, as if, unless the contrary appear, she were interested for her separate property (b); without the necessity of her husband joining in any transfer (c). Also a married woman who is an executrix or administratrix, or trustee, alone or jointly with any other person or persons, may sue and be sued, and may transfer or join in transferring the same, without her husband as if she were a feme sole (d). With regard to the funds firstly referred to, the fact of their standing in her sole name is made sufficient *prima facie* evidence that she is also beneficially entitled thereto for her separate use (e). But it is provided that a corporation or joint stock company is not, by the above provision, required or authorised to admit any married woman to be a holder of any shares or stock to which any liability may be incident, contrary to the provision of any act, charter, bye-law, articles of association or deed of settlement regulating it (f).

Distringas.

Where funds are assigned consisting of stock (which expression includes shares, securities, and money), standing in the books of a company (which expression includes the Governor and Company of the Bank of England and any other public company, whether incorporated or not), any person claiming to be interested, and therefore an assignee, may file an affidavit and notice in the prescribed form in the Central Office of the Supreme Court, and then serve an office copy (g) and duplicate notice on the company (h). Such notice is in

(b) 45 & 46 Vict. c. 75, ss. 6—8.

(c) S. 9. Provision is made to protect him from fraudulent investments of his money by ss. 10, 17.

(d) S. 18.

(e) S. 6.

(f) S. 7.

(g) *i.e.*, a copy made by an officer appointed by law for the purpose: Best, § 486.

(h) R. S. C. 1883, Ord. XLVI. rr. 2—11, 14.

place of the former process by writ of *distringas*, which was abolished by the Rules of the Supreme Court, 1880 (*i*). The effect of such writ was to prevent the transfer of stock or shares, or the payment of dividends without notice to the person who issued the writ. It was originally issued out of the Equity side of the Court of Exchequer; but, when the equity jurisdiction of that Court was taken away, the power of issuing it was transferred to the Court of Chancery (*k*). The Act which effected this applied in terms only to the Bank of England (*l*), but the practice was to allow the writ to issue to any public company (*m*).

“The process against a body corporate,” says Blackstone (*n*), “is by *distringas*, to distrein them by their goods and chattels, rents and profits, till they shall obey the summons or directions of the Court.”

The Rules do not state expressly what is the effect of the service on the company, but only that it shall have the same force and effect against the company as a writ of *distringas* duly issued would have had (*o*). The effect was notice only, the object of it being to prevent the fund being dealt with without the person who issued the writ having an opportunity of asserting his claim (*p*). The effect is temporary only, namely, until after due time for bringing an action; but an order may be obtained under s. 4 of 5 Vict. c. 5 (*q*) upon motion or petition in a summary way, without action:—

“To restrain the Governor and Company of the Bank of

(*i*) R. S. C. 1880, Ord. XLVI. r. 2a.
See R. S. C. 1883, Ord. XLVI. r. 2.

(*k*) 5 Vict. c. 5, s. 5.

(*l*) See Sched. I. to 5 Vict. c. 5.

(*m*) Seton on Decrees, vol. i. 285.

(*n*) Bl. vol. iii. 445.

(*o*) Ord. XLVI. r. 8.

(*p*) See per Stuart, V.-C., in *Wilkins v. Sibley*, 4 Giff. 446, 447.

(*q*) See *In re Blaksley's Trusts*, L. R. 23 Ch. D. 549; *In re Prynn*, W. N. (1885), 144.

Chap. V. England or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company which may be standing in the name or names of any person or persons or body politic or corporate, in the books of the Governor and Company of the Bank of England, or in the books of any such public company, or from paying any dividend or dividends due or to become due thereon."

Or in the case of the Bank of England an injunction may be obtained against the Bank, under 39 & 40 Geo. 3, c. 36, in an action against the person interested in the fund (*r*).

Stop Order.

Where the fund is in Court to the general credit of any cause or matter, or to the account of any class of persons, the assignee should obtain a stop order by application to the Court upon petition or summons (*s*); or a subsequent assignee may obtain priority by doing so (*t*).

Judicature
Act, 1873.

Under the Judicature Act, 1873 (*u*), an absolute assignment by writing, with express notice in writing to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim the chose in action, is effectual in law to pass and transfer the legal right. It is enacted:—

S. 25 (6). "Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not

(*r*) Seton on Decrees, vol. i. 284.

(*t*) *Pinnock v. Bailey*, L. R. 23 Ch.

(*s*) R. S. C. 1883, Ord. XLVI. rr.

D. 497.

12, 13.

(*u*) 36 & 37 Vict. c. 66, s. 25 (6).

passed,) to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action (x) shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees."

It will be observed that the above section, while dealing with the assignment of a "debt or other *legal* chose in action," speaks of notice to "the debtor, *trustee*, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action." But a claim against a trustee would be equitable, and before the Act the assignee could, as we have seen, sue in his own name in a Court of equity; and it would have been assignable in equity without a writing.

It was considered that the effect of the Judicature Act irrespective of the above provision, by the fusion of jurisdiction of the Courts of Common Law and Equity (y), was that an assignee for value (whether absolute or by way of mortgage only) of a legal debt or other chose in action could sue in his own name (z). But it has been held that, by virtue of the above provision, the mortgagee of a debt must, as formerly, sue in the name of the mortgagor: that

(x) *i.e.*, of which there had been an absolute assignment in writing: *In re Sutton's Trusts*, L. R. 12 Ch. D. 175.

s. 25 (11).

(y) 36 & 37 Vict. c. 66, s. 24 and

(z) See 2 Da. ii. 137, and notes to Judicature Act, 1873, by F. O. Haynes.

Chap. V.

the covenant to reconvey on payment of what was owing indicated upon the face of the assignment that "it purports to be by way of charge only," so as to bring it within the exception, and prevent it from being an absolute assignment within the meaning of the statute (*a*). This being so, it is still necessary in a mortgage of a debt to give the assignee a power of attorney to sue for the debt in the name of the creditor (*b*).

On the other hand it has been held that an assignment upon trust to receive the debts assigned, and to pay thereout a sum due to the assignee by the assignor, and to pay the surplus to the assignor, was "absolute" within the above provision, and the assignee might sue in his own name for the debts (*c*).

The assignment need not be of an existing debt; it may be of a debt to become due, for instance, a sum of money to be earned by a builder under agreement (*d*); and it may be contained in a written order to the debtor to pay a sum of money to a third party out of moneys due, or to become due, to the creditor (*e*); and such order may be addressed to the third party, notice being given to the debtor (*f*).

It is not stated in the above section by whom notice is to be given to the debtor, or that it must be given in the lifetime of the assignor; so that notice by the assignee after the death of the assignor will be good, and enable the

(*a*) *Per* Pollock, B., *National Provincial Bank v. Harle*, L. R. 6 Q. B. D. 630.

(*b*) See Form, 2 Da. ii. 725.

(*c*) *Burlinson v. Hall*, L. R. 12 Q. B. D. 347.

(*d*) *Brice v. Bannister*, L. R. 3 Q. B. D. 569; *Buck v. Robson*, *ib.* 686; *Ex parte Hall*, *In re Whitting*, 10 Ch.

D. 615; *Walker v. Bradford Old Bank*, 12 Q. B. D. 511.

(*e*) *Brice v. Bannister*, L. R. 3 Q. B. D. 569; *Ingle v. M'Cutchan*, 12 Q. B. D. 518; *Knill v. Prowse*, 33 W. R. 163.

(*f*) *Harding v. Harding*, L. R. 17 Q. B. D. 442.

assignee to sue in his own name (*g*). The effect of delay in giving the notice would only be to let in all equities which may exist or be created prior thereto (*h*). Chap. V.

Under the Conveyancing and Law of Property Act, 1881, the right to recover and receive any debt or other thing in action subject to a trust will, on the appointment of a new trustee, without any assignment, vest in the trustees, if the deed appointing the new trustee contains a declaration by the appointor to that effect (*i*); and similarly where a deed by which a retiring trustee is discharged under the Act contains such a declaration by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees (*k*). Except that this provision does not extend to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under Act of Parliament (*l*); such exception being for the purpose of reserving to companies and other bodies the right to require transfers in the statutory form for making the same.

Conveyancing
Act, 1881.

Such vesting by declaration without assignment will not render notice to the debtor unnecessary.

Also by the Conveyancing and Law of Property Act, 1881, it is enacted that a thing in action may be conveyed (*i.e.*, assigned) by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person (*m*). This was supplemental to Lord St. Leonard's Law of Property, &c., Amendment Act, 1859 (*n*), by which it was enacted that:—

(*g*) *Walker v. Bradford Old Bank*,
L. R. 12 Q. B. D. 511.

(*h*) *Walker v. Bradford Old Bank*,
L. R. 12 Q. B. D. 517, *per* Smith, J.

(*i*) 44 & 45 Vict. c. 41, s. 34 (1).

(*k*) S. 34 (2).

(*l*) S. 34 (3).

(*m*) S. 50. See M. L. R. P. 267.

(*n*) 22 & 23 Vict. c. 35, s. 21.

Chap. V.

S. 21. "Any person shall have power to assign personal property now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another."

Prior to the Act of 1859 an assignment of leasehold property or choses in possession by A. to himself and B. vested the whole of the property in B.; and it was therefore necessary on a change of trustees to have two deeds, namely, first, an assignment by the continuing trustee to a provisional trustee, and, secondly, an assignment by such provisional trustee to the continuing and new trustees jointly.

CHAPTER VI.

Chap. VI.CHOSES IN ACTION (*continued*).

IN exception to the doctrine of the non-assignability of a chose in action, Bills of Exchange early became assignable by custom (*a*), and Promissory Notes by statute (*b*); and the person who by a genuine indorsement, or, where the instrument was payable to bearer, by delivery, became holder, might sue in his own name on the contract, and, if a *bond fide* holder for value, he had a good title notwithstanding any defect of title in the party (whether indorser or deliverer) from whom he took it (*c*), that is to say, it was 'negotiable.' The rule, that any one taking an assignment of a chose in action takes it subject to all existing equities (*d*), was not the rule as regards the right to sue on a bill of exchange or promissory note (*e*).

Bills of exchange and promissory notes negotiable.

The following is a form of Bill of Exchange:—

I. Bills of exchange.

“LONDON, 1ST APRIL, 1887.

£100.

Two months after date pay to Mr. John Jones or Order One Hundred Pounds for value received.

BENJAMIN BROWN.

To

MR. ROBERT ROBINSON,
Merchant, Liverpool.”

(*a*) Notes to *Ryall v. Rowles*, 2 Wh. & T. L. Ca. in Eq. 837.

Q. B. 382, per Blackburn, J.; *Miller v. Race*, 1 Sm. L. Ca. 516.

(*b*) 3 & 4 Anne, c. 9; 7 Anne, c. 25.

(*d*) *Ante*, p. 96.

(*e*) *Taylor v. Blakelock*, L. R. 32 Ch.

(*c*) *Crouch v. Credit Foncier*, L. R. 8

D. 567, per Cotton, L.J.

Chap. VI.

Benjamin Brown would be termed the 'drawer'; Robert Robinson the 'drawee,' and, if he accepted it the 'acceptor'; John Jones the 'payee,' and, if he indorse it, the 'indorser'; and the person to whom it is indorsed the 'indorsee' or 'holder.'

Blackstone says (*f*):—

"A bill of exchange is a security, originally invented among merchants in different countries, for the more easy remittance of money from one to the other, which has since spread itself into almost all pecuniary transactions. It is an open letter of request from one man to another, desiring him to pay a sum named therein to a third person on his account; by which means a man at the most distant part of the world may have money remitted to him from any trading country. If A. lives in Jamaica, and owes B., who lives in England, 1000*l.*, now if C. be going from England to Jamaica, he may pay B. this 1000*l.*, and take a bill of exchange drawn by B. in England upon A. in Jamaica, and receive it when he comes thither. Thus does B. receive his debt, at any distance of place, by transferring it to C.; who carries over his money in paper credit, without danger of robbery or loss. This method is said to have been brought into general use by the Jews and Lombards, when banished for their usury and other vices; in order more easily to draw their effects out of France and England, into those countries in which they had chosen to reside. The invention of them was a little earlier: for the Jews were banished out of Guienne in 1287, and out of England in 1290; and in 1236 the use of paper credit was introduced into the Mogul Empire in China."

Again, Professor Bell says (*g*):—

"Bills are to be viewed not only as obligations of simple form and ready execution, but as part of the circulating medium of the country, by means of which manufacturers and merchants turn

(*f*) Vol. ii. 466.

(*g*) Bell's Principles of the Law of Scotland (edited by Guthrie), § 305.

credit into a negotiable shape, and are enabled to proceed with their dealings as if paid in cash for their goods, while the buyer is indulged with a delay of payment till the returns of trade fill his hands."

Chap. VI.

The Bills of Exchange Act, 1882 (*h*), was passed to codify the law relating to bills of exchange, cheques, and promissory notes, and, with the exception of two special provisions relating to Scotland only (*i*), it makes one uniform law for the whole United Kingdom; the rules of common law, however, including the law merchant, when not inconsistent with the express provisions of the Act, continue to apply (*k*). Also the rules in bankruptcy continue to apply (*l*).

Bills of Exchange Act, 1882.

Rules of common law, law merchant, and bankruptcy.

The Act contains the following definition of a Bill of Exchange (*m*) :—

Definition.

S. 3 (1). "A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer."

(2.) "An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange."

(3.) "An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to re-imburse

(*h*) 45 & 46 Vict. c. 61.

(*i*) SS. 53 (2), 100. See also s. 98, preserving the summary procedure under 12 Geo. III. c. 72, ss. 37, 39—43; and 1 & 2 Vict. c. 114, ss. 1, 9. In England summary procedure under

R. S. C. 1883, Ord. XIV. has been substituted for 18 & 19 Vict. c. 67.

(*k*) 45 & 46 Vict. c. 61, s. 97 (2).

(*l*) S. 97 (1).

(*m*) S. 3.

Chap. VI.

himself or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill is unconditional.

(4.) "A bill is not invalid by reason

(a.) That it is not dated ;

(b.) That it does not specify the value given, or that any value has been given therefor ;

(c.) That it does not specify the place where it is drawn or the place where it is payable."

Inland or
foreign.

Bills of exchange are classified as 'inland' or 'foreign.' Before the statutes passed in 1856 (*n*) for assimilating the mercantile laws of the United Kingdom, a bill drawn in Scotland or Ireland upon England was a foreign bill; but those statutes extended the geographical limits for inland bills, and these remain the same under the Bills of Exchange Act, 1882, in which are the following definitions of inland and foreign bills (*o*):—

S. 4 (1). "An inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the British islands, or (b) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act 'British Islands' mean any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) "Unless the contrary appear on the face of the bill the holder may treat it as an inland bill."

Payee.

Where a bill was not payable to bearer it was requisite that the payee should be so named or indicated as to be

(*n*) 19 & 20 Vict. c. 60, s. 12 ; 19 & 46 Vict. c. 61, s. 96).
20 Vict. c. 97, s. 7 (repealed by 45 & (o) 45 & 46 Vict. c. 61, s. 4.

capable of being ascertained at the time the instrument was made; therefore there could not be an alternative payee, as A. or B. (*p*), nor could the payee be an officer *for the time being* of a company (*q*); but now a bill may be made payable in the alternative, or to such officer. The Bills of Exchange Act, 1882, provides (*r*):—

S. 7 (1). “Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein within reasonable certainty.

(2.) “A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) “Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.”

Formerly a bill of exchange was not negotiable unless it contained one or other of the words ‘order’ or ‘bearer’; but now these words need not appear (*s*). It is thus stated in the Bills of Exchange Act, 1882, what bills are not negotiable and what are (*t*):—

What bills are negotiable.

S. 8 (1). “When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) “A negotiable bill may be payable either to order or to bearer.

(3.) “A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(*p*) *Blanchenhagen v. Blundell*, 2 B. & Ald. 417.

(*q*) *Storm v. Stirling*, 3 E. & B. 832.

(*r*) 45 & 46 Vict. c. 61, s. 7.

(*s*) Byles on Bills (14th ed.), 93 (note).

(*t*) 45 & 46 Vict. c. 61, s. 8.

Chap. VI.

(4.) "A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable (*u*).

(5.) "Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option."

When
payable.

A bill is either payable on demand, or at a determinable future time. Each is defined by the Act as follows (*x*):—

S. 10 (1). "A bill is payable on demand;—

- (a.) Which is expressed to be payable on demand, or at sight, or on presentation: or
- (b.) In which no time for payment is expressed.

(2.) "Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

S. 11. "A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable:—

- (1.) At a fixed period after date or sight.
- (2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect."

(*u*) Formerly in Scotland only, not in England, might bills, although not taken payable to order, be indorsed:

Bell's Principles, § 329.

(*x*) 45 & 46 Vict. c. 61, ss. 10, 11.

In the case of the latter, three days, called ‘days of Chap. VI.
grace,’ are added to the time of payment fixed by the Days of grace.
bill: but when the last of such days falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal Proclamation as public fast or thanksgiving day, the bill is due and payable on the preceding business day; or when the last day of grace is a bank holiday (other than Christmas Day or Good Friday), or it is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day (*y*).

A bill is not invalid by reason only that it is ante-dated, post-dated, or bears date on a Sunday (*z*).

The name of a ‘referee in case of need’ may be inserted in a bill by the drawer or any indorser, that is, a person to whom the holder may resort in case the bill is dishonoured by non-acceptance or non-payment (*a*). Referee in
case of need.

It has been said above that the drawee of the bill, Acceptance.
if he accept it, is termed the acceptor. The following definition and requisites of acceptance are given in the Act (*b*):—

S. 17 (1.) “The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer;

(2.) “An acceptance is invalid unless it complies with the following conditions, namely:

(*a*.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*.) It must not express that the drawee will perform his promise by any other means than the payment of money.”

(*y*) S. 14.

(*z*) S. 13.

(*a*) S. 15. And see ss. 43, 47.

(*b*) S. 17.

Chap. VI.

The provision that mere signature is sufficient for acceptance is in accordance with the Bills of Exchange Act, 1878 (*e*), which was passed to overrule a decision in 1876 that it was not sufficient since the Mercantile Law Amendment Act, 1856 (*d*).

An acceptance may be 'general' or 'qualified.' The Act says (*e*):—

S. 19 (2.) "A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified, which is

- (*a.*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated :
- (*b.*) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn :
- (*c.*) Local, that is to say, an acceptance to pay only at a particular specified place :

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere :

(*d.*) Qualified as to time :

(*e.*) The acceptance of some one or more of the drawees, but not of all."

Delivery.

To give effect to it there must be delivery of the bill (*f*), that is, transfer of possession, actual or constructive, from one person to another (*g*), and until delivery every contract in it, whether the drawer's, the acceptor's, or an indorser's, is incomplete and revocable; or there must be notification,

(*c*) 41 & 42 Vict. c. 13 ; repealed by 45 & 46 Vict. c. 61, s. 96.

(*d*) 19 & 20 Vict. c. 97, s. 6. See *Hindhaugh v. Blakey*, L. R. 3 C. P. D. 136 ; also *Steele v. McKinlay*, 5 Ap.

Ca. 754.

(*e*) 45 & 46 Vict. c. 61, s. 19.

(*f*) 45 & 46 Vict. c. 61, s. 21.

(*g*) S. 2.

that is, notice by the drawee to, or according to the directions of, the person entitled to the bill that he has accepted it, and then the acceptance is complete and irrevocable (*h*).

The signing and delivery of a blank or skeleton bill is a prima facie authority to fill it up for any amount which the stamp will cover, using the signature for that of the drawer, the acceptor, or an indorser; and similarly, when a bill is wanting in any material particular the holder has prima facie authority to fill up the omission in any way he thinks fit (*i*). But the completion must be within a reasonable time and in accordance with the authority given (*j*); the drawer's name, it would seem, may be filled in even after the acceptor's death (*k*).

Skeleton
bill—
inchoate
instruments.

As we have seen (*l*), infants are generally incapable of entering into contracts, and in general a corporation can only contract by writing under their common seal (*m*), and being established for a specific purpose cannot bind itself by a contract which is entirely unconnected with the purposes of its incorporation (*n*). Therefore, it was held that a railway company, incorporated in the usual way by private Act of Parliament, which contained no provision empowering them to draw, accept, or indorse bills of exchange, was not competent to do so, and acceptances given by them with the seal of the company annexed were not binding upon them (*o*). But a corporation may issue bills, where the terms of the instrument under which it is constituted authorise, upon a fair construction, the issuing

Parties—
infants—
corporations.

(*h*) 45 & 46 Vict. c. 61, ss. 2, 21.

(*i*) S. 20 (1). See *Gurrard v. Lewis*,
L. R. 10 Q. B. D. 30.

(*j*) 45 & 46 Vict. c. 61, s. 20 (2).

(*k*) *Curtis v. White*, L. R. 25 Ch. D.
666.

(*l*) *Ante*, p. 37.

(*m*) *Ante*, p. 49. See *Crouch v.*
Credit Foncier of England, L. R. 8
Q. B. 374.

(*n*) *Bateman v. Mid Wales Rail. Co.*,
L. R. 1 C. P. 508, *per* Erle, C.J.

(*o*) *Ib.* p. 499.

Chap. VI.

of bills, or where the business of the corporation is one which cannot in its ordinary course be carried on without bills (*p*), for instance, where it is incorporated for the purpose of trade (*q*). In the case of a company under the Companies Act, 1862, the provisions thereof not being affected by the Bills of Exchange Act (*r*), the question will turn upon the proper construction of the Memorandum and Articles of Association (*s*). Accordingly, by the Bills of Exchange Act, 1882, it is enacted as follows (*t*):—

S. 22 (1.) “Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2.) “Where a bill is drawn or indorsed by an infant, minor, or corporation, having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.”

In the case of a corporation in place of signature to any instrument in writing required by the Act to be signed, the corporate seal may be attached; but this does not mean that the bill or note of a corporation must be under seal (*u*). By the Companies Act, 1862 (*x*), with regard to a company

(*p*) *Peruvian Rail. Co. v. Thames & Mersey Mar. Ins. Co.*, L. R. 2 Ch. Ap. 622, *per* Lord Cairns, L.J.

(*q*) Byles on Bills, 77.

(*r*) 45 & 46 Vict. c. 61, s. 97 (2) (*b*).

(*s*) See Buckley's Companies Acts, 156; 25 & 26 Vict. c. 89, s. 47. As to the personal liability of directors

on acceptances for their company when it has no power to accept bills, see *West London Commercial Bank v. Kitson*, L. R. 13 Q. B. D. 360.

(*t*) 45 & 46 Vict. c. 61, s. 22.

(*u*) S. 91.

(*x*) 25 & 26 Vict. c. 89, s. 47; and see 30 & 31 Vict. c. 131, s. 37.

incorporated thereunder, and having authority to draw, Chap. VI.
accept, or indorse a bill of exchange, it is provided that:—

S. 47. “A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under this Act, if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company by any person acting under the authority of the company.”

Signature is essential to liability under a bill whether as drawer, indorser, or acceptor, but it may be written by another person by or under the authority of the person to be liable (*y*); and generally where a signature is forged or placed on a bill without authority, it is wholly inoperative, unless the party, against whom it is sought to retain or enforce payment of the bill, is precluded from setting up the forgery or want of authority (*z*). For instance, where one sued upon a bill has declared or admitted that the signature is his own and has thereby altered the condition of the holder to whom the declaration or admission has been made, he is estopped from denying his signature (*a*); but where there has been no such declaration or admission, but on the contrary a statement that the alleged signature was a forgery, there arises no such estoppel and there cannot be ratification of a forgery (*b*). Ratification can apply only to an unauthorised signature not amounting to a forgery, for instance, where it was pretended to be made for or under the authority of the person sought to be charged (*c*). Signature.
(Estoppel—
ratification.)

(*y*) 45 & 46 Vict. c. 61, s. 91.

Linen Co., 6 Ap. Ca. 82.

(*z*) Ss. 23, 24.

(*b*) *Ib.*

(*a*) *Brook v. Hook*, L. R. 6 Ex. 99,

(*c*) *Ib.*

per Kelly, C.B. See *M'Kenzie v. British*

Chap. VI.

(Bankers.)

For the protection of bankers, however, when a bill payable to order on demand is drawn on a banker, who pays it in good faith and in the ordinary course of business, he need not show that the indorsement of the payee, or any subsequent indorsement, was by or under the authority of the person whose indorsement it purports to be; and he will be deemed to have paid in due course, although the indorsement have been forged or made without authority (*d*).

(Per procurator—agent.)

Sometimes the signature is ‘by procuration,’ thus, “Benjamin Brown *per pro*: Samuel Smith.” Such a signature operates as notice that Samuel Smith as the agent of Benjamin Brown has but a limited authority to sign; and the principal is bound only if the agent was acting within the limits of his authority (*e*). Where an agent signs for or on behalf of a principal, or in a representative character, he is not liable; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability (*f*). The usual term to employ in an indorsement by an agent is *sans recours* or ‘without recourse,’ (‘to me’ being understood), or *sans frais*.

Consideration.

It will be remembered that in the case of a contract by deed, that is, under seal, or, as it is termed, a ‘specialty,’ consideration is presumed in law (*g*); this is by reason of the solemnity and deliberation with which, on account of the ceremonies to be observed, it is supposed to be entered into. But to support a contract not under seal, or a ‘simple contract,’ valuable consideration must be proved. Now

(*d*) 45 & 46 Vict. c. 61, s. 60; taken from 16 & 17 Vict. c. 59, s. 19.

(*e*) 45 & 46 Vict. c. 61, s. 25.

(*f*) S. 26.

(*g*) *Ante*, p. 13.

contracts arising on a bill of exchange are simple contracts, Chap. VI.
but consideration is presumed till the contrary appear ; or,
 as it is expressed in the Bills of Exchange Act, 1882 (*h*) :—

S. 30 (1.) “ Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

(2.) “ Every holder of a bill is *primâ facie* deemed to be a holder in due course ; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.”

Valuable consideration may be constituted (*i*) by :—

S. 27 (1) “ (*a.*) Any consideration sufficient to support a simple contract ;

(*b.*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.”

Sometimes a person wishing to issue a bill will ask another to lend him his acceptance, the intention being that the latter should be considered as the real acceptor of the bill, and should take up the bill when it became due, but the former should provide the funds for so doing or indemnify the acceptor (*k*). Such a bill is called an ‘accommodation bill.’ With regard to it the Bills of Exchange Act has the following provision (*l*) :—

Accommodation.

(*h*) 45 & 46 Vict. c. 61, s. 30 ; and see s. 27.

(*i*) 45 & 46 Vict. c. 61, s. 27 (1). See *per* Lord Blackburn in *M'Lean v. Clydesdale Banking Co.*, L. R. 9 Ap.

Ca. 115. And see *post*, p. 233.

(*k*) *Reynolds v. Doyle*, 1 Man. & Gr. 753 ; and Byles on Bills, 151.

(*l*) 45 & 46 Vict. c. 61, s. 28.

Chap. VI.

S. 28 (1.) "An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) "An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not."

It will be observed that the accommodating party becomes liable as soon as value is given, and notice to the party giving value is immaterial.

Holder in
due course.

The 'holder of a bill in due course,' which expression takes the place of '*bonâ fide* holder for value without notice,' is thus defined (*m*):—

S. 29 (1.) "A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely,—

(a.) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(b.) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) "In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) "A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor, and all parties to the bill prior to that holder."

(*m*) 45 & 46 Vict. c. 61, s. 29.

We have seen what bills are negotiable, and that there must be delivery of the instrument to give effect to it *(n)*. This leads to the question what amounts to negotiation of a bill. The Act thus expresses it *(o)* :—

Chap. VI.
Negotiation.

S. 31 (1.) "A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) "A bill payable to bearer is negotiated by delivery.

(3.) "A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) "Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) "Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability."

The indorsement is sometimes written on an 'allonge, that is, a slip of paper attached to the bill, where there is not room on the bill for all the indorsements *(p)*.

Indorsement.

Where in a bill payable to order the payee or indorsee is wrongly designated or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature *(q)*. Where a bill is made payable to the order of a married woman thus, "To Mrs. John Jones or order," the generally accepted indorsement is (say) "Martha Jones, wife of John Jones" *(r)*.

Although the drawing of a bill must be unconditional,

(n) *Ante*, ss. 8, 21; *ante*, pp. 109, 112.

(o) 45 & 46 Vict. c. 61, s. 31.

(p) S. 32 (1).

(q) S. 32 (4).

(r) See Chalmers on Bills of Exchange Act, 1882, p. 21.

Chap. VI.

the acceptance, it will have been seen, may be conditional (*s*), for instance, "payable on delivery of bills of lading": so an indorsement is not void because it purports to be conditional, but the condition may be disregarded by the payer, and payment to the indorsee will be valid whether the condition have been fulfilled or not (*t*).

An indorsement 'in blank' specifies no indorsee, and the bill is payable to bearer; a 'special' indorsement specifies the person to whom, or to whose order, the bill is payable (*u*).

It would seem that the drawing of a bill may be restrictive, in which case it is not negotiable (*x*); the indorsement may also contain terms making it restrictive (*y*); thus, it may be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection" (*z*).

Negotiation
of overdue or
dishonoured
bill.

A negotiable bill continues to be so until it has been restrictively endorsed, or discharged by payment or otherwise (*a*); but if it be overdue, or have been dishonoured (*b*), when negotiated the rights of the holder will not be the same as when negotiated before. The Act provides (*c*):—

S. 36 (2.) "Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3.) "A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this section, when it appears on the face of it to have been in circulation

(*s*) 45 & 46 Vict. c. 61, s. 19 (2) (*a*);
ante, p. 112.

(*t*) S. 33.

(*u*) S. 34 (1) (2).

(*x*) S. 8 (1); *ante*, p. 109.

(*y*) S. 32 (6).

(*z*) 45 & 46 Vict. c. 61, s. 35 (1).

(*a*) S. 36 (1).

(*b*) See ss. 43 (1), 47 (1), as to what is dishonour, by non-acceptance or by non-payment.

S. 36.

for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) "Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5.) "Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course" (d).

Otherwise the rights and powers of the holder of the bill are as follows (e) :— Rights of holder.

S. 38 (1.) "He may sue on the bill in his own name :—

(2.) "Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :

(3.) "Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill ; and (b) if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill."

In order to render liable any party to a bill, in the following cases only is 'presentment' by the holder of a bill to the drawee for acceptance necessary, namely : (1.) Where it is payable after sight, then it is necessary in order to fix the maturity of the instrument ; or (2.) Where it expressly stipulates that it shall be presented ; or, (3.) Where it is drawn payable elsewhere than at the residence or place of business of the drawee (f). Presentment for acceptance.

(d) For definition of 'holder in due course,' see s. 29, *ante*, p. 118. (f) 45 & 46 Vict. c. 61, s. 39 (1), (2), (3).

(e) 45 & 46 Vict. c. 61, s. 33.

Chap. VI.

The holder of a bill payable after sight must either present it for acceptance or negotiate it within a reasonable time, or the drawer and all endorsers prior to that holder will be discharged; in determining what is reasonable time regard must be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case (*g*).

Presentment must be according to the rules expressed in the Act (*h*); except in the following cases, in which a bill may be treated as dishonoured by non-acceptance (*i*), namely :—

S. 41 (2) “(a.) Where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill :

(b.) Where, after the exercise of reasonable diligence, such presentment cannot be effected :

(c.) Where, although the presentment has been irregular, acceptance has been refused on some other ground.”

Non-acceptance within the customary time must be treated as dishonour; the effect of which is that an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary (*k*).

A qualified acceptance may be refused by the holder and treated as dishonour; but where taken without the authority or assent of the drawer or an indorser, it not being a partial acceptance whereof due notice has been given, such drawer or indorser is discharged from liability (*l*).

Every bill must be presented for payment, or the drawer

Presentment
for payment.

(*g*) 45 & 46 Vict. c. 61, s. 40.

(*h*) S. 41 (1).

(*i*) S. 41 (2).

(*k*) Ss. 42, 43.

(*l*) S. 44.

and indorsers will be discharged (*m*), except in the following cases (*n*):— Chap. VI.

S. 46 (2) “(*a.*) Where, after the exercise of reasonable diligence presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b.*) Where the drawee is a fictitious person :

(*c.*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented :

(*d.*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented :

(*e.*) By waiver of presentment, express or implied.”

Presentment in order to bind the drawer and indorsers must be according to the rules expressed in the Act (*o*), for instance :—

S. 45 (1.) “Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2.) “Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(*m*) 45 & 46 Vict. c. 61, s. 45.

(*n*) S. 46 (2).

(*o*) S. 45.

Chap. VI.

(6.) "Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7.) "Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8.) "Where authorised by agreement or usage, a presentment through the post office is sufficient."

Delay in presentment is excused when caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence; but it must then be made with reasonable diligence when the cause of delay ceases to operate (*p*).

The effect of dishonour by non-payment is that an immediate right of recourse against the drawer and indorsers accrues to the holder (*q*).

Notice of
dishonour.

Notice of dishonour, whether by non-acceptance or by non-payment, must, except in the cases mentioned below, be given to the drawer and each indorser, and any to whom notice is not given will be discharged (*r*); provided that:—

S. 48 (1.) "Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2.) "Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted."

(*p*) 45 & 46 Vict. c. 61, s. 46 (1).
(*r*) S. 48.

(*q*) S. 47.

The exceptions referred to above, in which notice of dishonour is dispensed with, are very similar to those in which presentment for payment is dispensed with; they are (s):—

S. 50 (2) “(a.) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged:

(b.) By waiver, express or implied, notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice:

(c.) As regards the drawer in the following cases, namely—(1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment:

(d.) As regards the indorser in the following cases, namely—(1) where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.”

Notice must be given in accordance with the rules expressed in the Act (t), for instance:—

S. 49 (12.) “The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter.

In the absence of special circumstances, notice is not

(s) 45 & 46 Vict. c. 61, s. 50 (2). See s. 46 (2), *ante*, p. 123.

(t) S. 49.

Chap. VI.

deemed to have been given within a reasonable time, unless—

- (a.) Where the person giving, and the person to receive notice, reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill:
- (b.) Where the person giving, and the person to receive notice, reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.

(13.) “Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14.) “Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.”

Delay in giving notice of dishonour is excused in circumstances similar to those in which delay in presentment for payment is excused; and in like manner notice must be given with reasonable diligence when the cause of delay ceases to operate (*u*).

Protest or
noting of
bill.

A ‘protest’ is a solemn declaration made by a notary public (*x*); it must contain a copy of the bill, and must be signed by the notary, and must specify:—

S. 51 (7) (*a*.) “The person at whose request the bill is protested:

(*u*) 45 & 46 Vict. c. 61, s. 50 (1).
See s. 46 (1), *ante*, p. 124.

(*x*) Byles on Bills, 212, 214; 45 & 46 Vict. c. 61, s. 51 (7).

(b.) “The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.”

Chap. VI.

Where the bill is lost or destroyed, or wrongfully detained, the protest may be on a copy, or written particulars of it (*y*). Where a notary cannot be obtained, it may be protested by a householder, or substantial resident of the place where the bill is dishonoured, in the presence of two witnesses, in the form prescribed by the Act (*z*). ‘Noting’ is a minute made on the bill by the officer at the time of refusal of acceptance or payment, and is considered as the preparatory step to protest (*a*). But the Act provides that where a bill is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest, and the formal protest may be extended at any time as of the date of the noting (*b*).

An inland bill may be noted or protested for non-acceptance or non-payment; but need not be so to preserve recourse against the drawer or indorser. On the other hand a foreign bill, appearing on the face of it to be such, must be duly protested (*c*). And where the acceptor of a bill becomes bankrupt, or suspends payment before it matures, the holder may have the bill protested for better security against the drawer and indorsers (*d*).

Protest is dispensed with by any circumstances which would dispense with notice of dishonour, and delay is excused in similar circumstances (*e*).

(*y*) 45 & 46 Vict. c. 61, s. 51 (8).

(*z*) S. 94, and Sched. I.

(*a*) Byles on Bills, 214.

(*b*) 45 & 46 Vict. c. 61, s. 93.

(*c*) 45 & 46 Vict. c. 61, s. 51 (1),

(2). Various reasons are given for this difference: see Byles on Bills, 211.

(*d*) 45 & 46 Vict. c. 61, s. 51 (5).

(*e*) S. 51 (9); and see s. 50 (1), (2),

ante, pp. 124, 126.

Chap. VI.

Acceptor.

As against the acceptor, presentment for payment is not necessary, except when required by the terms of a qualified acceptance, and even then in the absence of express stipulation he will not, as the drawer and indorsers, be discharged by the omission to present it on the day it matures; nor as against him is protest or notice of dishonour necessary (*f*).

It will be remembered that an acceptance to pay at a particular place, without an express statement that the bill is to be paid there only and not elsewhere, is a general and not a qualified acceptance (*g*).

Exhibiting
and delivering
up of bill.

The bill must be exhibited when payment is demanded, and on payment delivered up to the party paying it (*h*).

Liabilities of
parties.

The engagements of the acceptor of a bill, of the drawer, and of an indorser, are thus expressed in the Act (*i*):—

S. 54. “The *acceptor* of a bill by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance.

S. 55 (1.) “The *drawer* of a bill by drawing it—

Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(2.) “The *indorser* of a bill by endorsing it—

Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken.”

(*f*) 45 & 46 Vict. c. 61, s. 52 (1),
(2), (3).

(*g*) S. 19 (2) (*c*), *ante*, p. 112.

(*h*) S. 52 (4).

(*i*) Ss. 54, 55.

A stranger who signs the bill (*e.g.*, for security,) incurs no liability to the drawer or acceptor, but he incurs the liability of an indorser to a holder in due course (*k*).

Where a bill is dishonoured, the following liquidated damages may be recovered against the parties liable,—by the holder from any party liable on the bill, by the drawer who has been compelled to pay from the acceptor, and by an indorser who has been compelled to pay from the acceptor, or from the drawer, or from a prior indorser:—

Damages on dishonour of bill.

- (*a.*) The amount of the bill.
- (*b.*) Interest from presentment for payment, if payable on demand, otherwise from maturity.
- (*c.*) The expenses of noting or, when protest is necessary and the protest has been extended, of protest (*l*).

Where the bill has been dishonoured abroad, in lieu of the above, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay, may recover from any party liable to him, the amount of the re-exchange with interest thereon until payment. In addition to this, special damages of an unliquidated character which have been sustained may be recovered (*m*).

Where interest may be recovered as liquidated damages, it may, if justice so require, be withheld wholly or in part; and, where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper (*n*). ‘Interest proper’

(*k*) 45 & 46 Vict. c. 61, s. 56. See *Steele v. M'Kinlay*, L. R. 5 Ap. Ca. 754.

See s. 97 (2), *ante*, p. 107; and *In re Gillespie & Robarts*, L. R. 18 Q. B. D. 286.

(*l*) 45 & 46 Vict. c. 61, s. 57 (1).

(*n*) 45 & 46 Vict. c. 61, s. 57 (3).

(*m*) 45 & 46 Vict. c. 61, s. 57 (2).

Chap. VI. is where a bill is expressed to be payable with interest ; which, unless the instrument otherwise provides, runs from the date of the bill, and if the bill is undated from its issue (*o*).

Discharge
of bill.

A bill is discharged :—

- (*a*) by payment in due course (that is, at or after maturity to the holder in good faith and without notice of defect in title) by the drawee or acceptor (*p*) :
- (*b*) if an accommodation bill, when paid in due course by the party accommodated (*q*) :
- (*c*) where the acceptor is the holder at or after maturity in his own right (*r*) :
- (*d*) when the holder at or after maturity renounces his rights against the acceptor ; but such renunciation must be in writing, unless the bill is delivered up to the acceptor (*s*) :
- (*e*) where it is intentionally and apparently cancelled by the holder or his agent (*t*).

Alteration.

Also, where a bill or acceptance is materially altered without the assent of all parties, the bill is discharged, except against the party who made, authorised, or assented to the alteration, and subsequent indorsers ; provided that, where the alteration is not apparent, the holder in due course may avail himself of the bill as if it had not been altered, and may enforce payment according to its original tenor (*u*). Where the alteration is such as to make a fresh stamp

(*o*) 45 & 46 Vict. c. 61, s. 9 (3).
 (*p*) S. 59 (1).
 (*q*) S. 59 (3).
 (*r*) S. 61.
 (*s*) S. 62.
 (*t*) S. 63.

(*u*) 45 & 46 Vict. c. 61, s. 64. But see as to supplying material omission, s. 20, *ante*, p. 113. For instance of material alteration, see *Suffell v. Bank of England*, L. R. 9 Q. B. D. 555.

requisite, the bill may notwithstanding be void under the Stamp Acts (*x*). Chap. VI.

The provisions of the Act as to protesting inland and foreign bills for non-acceptance or for non-payment, or for better security, have been referred to (*y*). It also provides, in accordance generally with the previous law or custom enabling anyone interested to intervene for the protection of any party from loss by the return of the bill and accumulation of expenses, that where a bill has been protested for non-acceptance or for better security and is not overdue, any person not already liable on it may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable on it, or of the person for whose account it was drawn (*z*); where a bill payable after sight is accepted for honour, its maturity is notwithstanding calculated from the date of the noting for non-acceptance (*a*).

Acceptance
for honour.

The liability of the acceptor for honour is thus expressed (*b*):—

S. 66 (1.) “The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) “The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.”

A dishonoured bill accepted for honour, or containing a

(*x*) 45 & 46 Vict. c. 61, s. 97.

(*y*) S. 51, *ante*, pp. 126, 127.

(*z*) S. 65.

(*a*) S. 65 (5).

(*b*) S. 66.

Chap. VI. reference in case of need (*c*), must be protested for non-payment before presentment to the acceptor for honour or referee in case of need; delay in presentment, or non-presentment, is excused in the same circumstances as delay in presentment, or non-presentment, for payment (*d*).

Payment
for honour.

Also where a bill has been protested for non-payment any person may intervene to pay it *supra* protest for the honour of any party liable on it, or of the person for whose account it was drawn (*e*). Acceptance for honour does not require to be attested by a notarial act (*f*), but payment for honour, to operate as such, and not as a mere voluntary payment must be so attested (*g*). The effect of payment for honour is thus expressed (*h*):—

S. 68 (5.) “Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.”

If the holder refuse to receive payment *supra* protest, he will lose his right of recourse against any party who would have been discharged by payment (*i*).

Bills in a set.

Foreign bills are often drawn in duplicate or in ‘a set,’ each part of the set being numbered and referring to the other parts; for instance:—

“CALCUTTA, 1 Jan., 1887.

£5000.

At three months after sight pay this one first of

(*c*) 45 & 46 Vict. c. 61, s. 15. See
ante, p. 111.

(*d*) S. 67. See s. 46, *ante*, p. 124.

(*e*) S. 68.

(*f*) S. 65 (3).

(*g*) S. 68 (3).

(*h*) S. 68 (5).

(*i*) S. 68 (7).

exchange (second and third not paid) to the order of Mr. John Jones the sum of £5000 sterling value in account. Chap. VI.

“B. BROWN & Co.”

To R. ROBINSON & Co.”

The whole of the parts constitute one bill (*k*). Where the holder of a set indorses two or more parts to different persons, he is liable on each part, and every subsequent indorser is liable on the part he has indorsed, as if the parts were separate bills (*l*). If the drawee accepts more than one part, and his acceptances get into the hands of different holders in due course, he will be liable on each part as on a separate bill (*m*).

“Sometimes,” says Mr. Justice Byles (*n*), “bills drawn in England are payable in a foreign country, and bills drawn in a foreign country are payable in England. Sometimes English bills circulate abroad, and foreign bills circulate here: and, frequently suits on foreign bills, or bills negotiated abroad, are brought in English Courts of Justice. The laws of foreign countries, as to bills of exchange, often differ widely from the law of England, and from each other. But natural justice, mutual convenience, and the practice of all civilised nations, require that contracts, wherever enforced, should be regulated and interpreted according to the laws with reference to which they were made, otherwise the rights and liabilities of parties would entirely depend on the law of the country where the remedy might happen to be sought. Such a state of things would introduce uncertainty and confusion infinitely greater than arises from that measure of respect and comity which every tribunal now shows to the law of foreign nations.” Conflict of laws.

Therefore in accordance with the established principles

(*k*) 45 & 46 Vict. c. 61, s. 71.

10 B. & C. 449.

(*l*) S. 71 (2).

(*n*) Byles on Bills, 383.

(*m*) S. 71 (4); *Holdsworth v. Hunter*,

Chap. VI. of justice in this country, to prevent conflict of law, or rather the difficulties which would arise from the difference between the law of the country in which the liability was incurred and that of the country in which it was sought to enforce it, the Bills of Exchange Act provides that where a bill in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are to be determined generally by the law of the place in which the contract was made, or the act was done or to be done (*o*): provided that, where an inland bill has been indorsed in a foreign country, the indorsement, as regards the payer, is to be interpreted by the law of this country (*p*). The validity as regards requisites in form is determined by the law of the place of issue; as regards requisites in form of the supervening contracts, as acceptance, &c., by the law of the place where such contract was made. Thus a bill was drawn on 19th March at Newcastle by B. & Co. on C. in Spain in favour of R. trading as R. & Co. in Spain, and made payable three months after date, was purchased in London by A. from R. who indorsed it in London to H. who indorsed it to M. in Spain, who indorsed it in Spain to C., who also indorsed it in Spain to O'C. & Sons, by whom it was presented for acceptance in Spain on 1st of May, and was dishonoured. It was protested in Spain for such dishonour on the 2nd of May. Notice of the dishonour was sent by M. to H. in a letter written from Spain on the 13th of May and received in London on the 26th of May; and on the same day H. gave notice to R. In an action by H. against R., the latter set up as defence the want of notice of dishonour in due time; but the Court

(*o*) 45 & 46 Vict. c. 61, s. 72.

(*p*) S. 72.

held that as by the law of Spain no notice of dishonour by non-acceptance need be given, H. was entitled to recover from R. the amount of the bill (*q*). Chap. VI.

The Bills of Exchange Act, 1882, also deals with cheques, and generally reproduces with slight additions the Crossed Cheques Act, 1876 (*r*). A cheque is defined to be a bill of exchange drawn on a banker payable on demand: and generally the provisions of the Act applicable to a bill of exchange payable on demand apply to a cheque (*s*). II. Cheques.

Subject to the permitted excuses for delay or non-presentment for payment (*t*), the Act provides (*u*):— Presentment
for payment.

S. 74 (1.) "Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2.) "In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3.) "The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him."

This section effected a change in the law :

(*q*) *Horne v. Rouquette*, L. R. 3 Q. B. D. 514. See 45 & 46 Vict. c. 61, s. 72 (3). See also *In re Marseilles Extension Rail. & Land Co., Smallpage's & Brandon's cases*, 30 Ch. D. 598.

(*r*) 39 & 40 Vict. c. 81; repealed 45 & 46 Vict. c. 61, s. 96.

(*s*) 45 & 46 Vict. c. 61, s. 73.

(*t*) S. 46, *ante*, p. 124.

(*u*) S. 74.

Chap. VI.

"It was introduced," says Mr. Chalmers (*x*), "to mitigate the rigour of the common law rule, according to which, if the bank failed before the cheque was presented, the drawer was discharged, even though the bank eventually paid nineteen shillings in the pound. The new rule operates as follows:—A. draws a cheque for £100 on his banker, which is not presented within a reasonable time. The banker fails, A. having at the time sufficient money to his credit to meet the cheque. A. is discharged; but the holder can prove for £100 against the banker's estate."

Revocation
of banker's
authority.

A banker's authority to pay his customer's cheque is determined (1) by countermand of payment; (2) by notice of the customer's death (*y*); and (3) by notice that the customer has committed an act of bankruptcy (*z*).

"The clause in the bill," says Mr. Chalmers (*a*), "which dealt with the relations of banker and customer was omitted as belonging more properly to general law than the special subject of the Act.

"Apart from special agreement, the relation of banker and customer is held to be that of debtor and creditor; the customer being the creditor, and having, in addition to the ordinary rights of a creditor, the right to draw cheques on his banker to the extent of the balance at his credit and disposal. If the banker, having sufficient funds in hand, dishonours his customer's cheque, he is liable to him in an action for damages. When a bank has several branches, a customer having an account at one branch is not, in the absence of special agreement, entitled to draw on another branch."

Crossed
cheques.

A cheque is crossed *generally* by the following additions across its face (*b*):—

(*x*) Draftsman of the Bill. Bills of Exchange Act, 1882, by Chalmers (4th ed.), 55.

(*y*) 45 & 46 Vict. c. 61, s. 75.

(*z*) See s. 97, which saves the rules in bankruptcy, *ante*, p. 107.

(*a*) p. 55.

(*b*) 45 & 46 Vict. c. 61, s. 76 (1).

- S. 76 “(a.) The words ‘and company’ or any abbreviation thereof between two parallel transverse lines, either with or without the words ‘not negotiable’; or,
 (b.) Two parallel transverse lines simply, either with or without the words ‘not negotiable.’” Chap. VI.

It is crossed *pecially* by the addition across its face of the name of a banker, either with or without the words ‘not negotiable’ (c).

It may be crossed by the drawer, or after issue, under the following regulations (d) :—

S. 77 (1.) “A cheque may be crossed generally or specially by the drawer.

(2.) “Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) “Where a cheque is crossed generally, the holder may cross it specially.

(4.) “Where a cheque is crossed generally or specially, the holder may add the words ‘not negotiable.’

(5.) “Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) “Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.”

Where a person takes a crossed cheque ‘not negotiable,’ he neither has, nor can give, a better title to it than that which the person from whom he took it had (e). Therefore if such a cheque be stolen and afterwards be cashed by (say) a tradesman in good faith, he does not get, and cannot give, a better title to it than the thief. But where a banker Bankers. in good faith and without negligence receives payment for

(c) 45 & 46 Vict. c. 61, s. 76 (2).

(d) S. 77.

(e) S. 81.

Chap. VI. a customer of a cheque crossed generally, or specially to himself, and the customer has either no title or a defective title to it, the banker is not liable to the true owner by reason only of having received such payment (*f*). In other words, as expressed by Lindley, L.J. :—

“The legislature says if you, the bank, have collected only the proceeds of the cheque for your customer, we will not render you responsible for the proceeds when you have dealt with the cheque in the only way in which, as a matter of business, you could deal with it. If you have done anything more; if you have applied it to your own use, that is another matter; but if you have simply collected it through the clearing-house in the only way in which a banker collects cheques, and that is all you have done, the true owner shall look through you to your customer, and he and not you must be responsible to the true owner for the proceeds” (*g*).

III. Dividend warrants.

The provisions of the Act as to crossed cheques apply also to a warrant for payment of a dividend (*h*). But the Act does not affect the validity of any usage relating to dividend warrants, or their indorsement (*i*); for instance, where it is payable to the order of two or more persons, the usage is to pay on the indorsement of any one of them.

IV. Promissory notes.

Besides cheques the Bills of Exchange Act, 1882, also deals with promissory notes.

The following is a form of Promissory Note :—

“LONDON, 1st April, 1887.

£100.

Two months after date I promise to pay to Mr. John Jones or order one hundred pounds for value received.

BENJAMIN BROWN.”

(*f*) 45 & 46 Vict. c. 61, s. 82.

(*g*) *Matthiessen v. London & County Bank*, L. R. 5 C. P. D. 16.

(*h*) 45 & 46 Vict. c. 61, s. 95.

(*i*) S. 97 (3) (*d*).

“At common law,” says Mr. Justice Byles (*j*), “no note of hand (as a promissory note is frequently called), was transferable; and before the stat. of 3 & 4 Anne, c. 9, it was the opinion of Lord Holt and nearly all the judges, that no action could be maintained, even by the payee, on a promissory note as an instrument, but that it was only evidence of a debt. That statute first made promissory notes assignable and indorsable, like bills of exchange, and enabled the holder to bring his action on the note itself.” Chap. VI.

The Bills of Exchange Act, 1882, gives the following definition (*k*):—

S. 83 (1). “A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.”

If drawn payable to the maker’s order, it is not a note until indorsed by him (*l*). It may contain also a pledge of collateral security with authority to sell or dispose thereof (*m*).

It may be an inland or a foreign note, according to the following definition (*n*):— Inland or foreign.

S. 83 (4). “A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.”

Like a bill of exchange, which is incomplete and revocable until delivery (*o*), a note is inchoate only and incomplete until delivery, actual or constructive, to the payee or bearer (*p*). Delivery.

(*j*) Byles on Bills, 7.

(*k*) 45 & 46 Vict. c. 61, s. 83 (1).

(*l*) S. 83 (2).

(*m*) S. 83 (3).

(*n*) S. 83 (4).

(*o*) S. 21, *ante*, p. 112.

(*p*) S. 84 and s. 2.

Chap. VI.

Joint note.

But, unlike a bill of exchange, it may be made by two or more makers liable jointly, *or* jointly and severally, according to its tenor (*q*). Where it runs "I promise to pay" but is signed by two or more, it is deemed their joint and several note (*r*).

Presentment for payment.

Where a note payable on demand has been indorsed, it must be presented for payment within reasonable time of indorsement, or the indorser will be discharged (*s*). For determining what is reasonable time, regard must be had to the nature of the instrument, the usage of trade, and the facts of the particular case (*t*); but, unlike a bill of exchange, the note is not to be deemed overdue, so as to affect the holder with defects of title of which he had no notice, because a reasonable time has elapsed since its issue (*u*).

Where a note is in the body of it made payable at a particular place, presentment of it at that place for payment must be made, to render the maker liable, but otherwise it is not necessary (*v*). But presentment for payment is always necessary to render an indorser liable (*w*). Where a place of payment is indicated by way of memorandum only, presentment to the maker elsewhere, if sufficient in other respects, will suffice (*x*).

Liability of maker.

The liability of the maker of a note is thus expressed (*y*). He—

S. 88 (1.) "Engages that he will pay it according to its tenor.

(*q*) 45 & 46 Vict. c. 61, s. 85 (1).

(*r*) S. 85 (2).

(*s*) 45 & 46 Vict. c. 61, s. 86 (1).

See s. 10, *ante*, p. 110, as to when it is payable on demand.

(*t*) S. 86 (2). See s. 45 (2), *ante*, p. 123.

(*u*) S. 86 (3). See s. 36 (3), *ante*,

p. 120.

(*v*) S. 87 (1). See s. 52, *ante*, p. 128.

(*w*) S. 87 (2). See ss. 45 and 46, *ante*, p. 123.

(*x*) S. 87 (3).

(*y*) S. 88.

(2.) “Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.” Chap. VI.

Subject as above, the provisions of the Act relating to bills of exchange apply, with the necessary modifications, to promissory notes, except the following; namely, those relating to (1) presentment for acceptance, (2) acceptance, (3) acceptance *suprà* protest, and (4) bills in a set. Where a foreign note is dishonoured, protest is unnecessary (z).

Application of provisions as to bills of exchange.

In applying the provisions applicable, the maker of the note is to correspond with the acceptor of a bill, and the first indorser with the drawer of an accepted bill payable to drawer's order (a).

An ‘I. O. U.’ is an acknowledgment of debt merely, and does not amount to a promissory note. The following is a form :—

“LONDON, 1st April, 1887.

Mr. JOHN JONES,
I O U £100.

BENJAMIN BROWN.”

It is evidence only of a debt due, and therefore does not require a stamp; but if it contains words converting it into a promissory note, for instance, amounting to an agreement to pay on a given day, it must be stamped as such (b).

(z) 45 & 46 Vict. c. 61, s. 89 (1), (3).

(a) 45 & 46 Vict. c. 61, s. 89 (2).

(4). See *Leeds Bank v. Walker*, L. R. 11 Q. B. D. 84.

(b) See Byles on Bills, ch. iv.

Chap. VII.

CHAPTER VII.

CHoses IN ACTION (*continued*).

I. Debentures.

ANOTHER form of chose in action is a security for the payment of money styled a 'debenture,' and which is frequently issued by joint stock companies to secure repayment of money borrowed, or in payment for property purchased, services rendered, or money due. There are various kinds: (1) 'mortgage-debentures,' that is, secured by a mortgage of, or charge upon, some property; (2) 'bonds;' and (3) instruments not under seal, entitled 'debentures,' and containing a promise to pay.

The power of a company to issue 'debentures' depends upon their power to borrow, which may be given by the Memorandum of Association, or may arise by implication from the nature of the business of the company (*a*); similarly their power to issue 'mortgage-debentures' depends on their power to mortgage, which may be given or may arise in like manner. There are generally attached to them 'coupons' for interest: these can be detached, and at the period for payment interest will be paid to bearer on presentation. Upon a question arising whether an instrument of the last kind was more than a promissory note, and so chargeable under the Stamp Act, or whether it was a 'debenture' within the Act, which it was decided to be, Lindley, J., said (*b*):—

(*a*) See *ante*, p. 114.

(*b*) *Brit. Ind. Steam Navigation Co.*
v. *Commissioners of Inland Revenue*,

L. R. 7 Q. B. D. 172. For forms, see
Palmer's Company Precedents, 264
et seq.

“Now what the correct meaning of ‘debenture’ is I do not know. I do not find anywhere any precise definition of it. We know that there are various kinds of instruments commonly called debentures. You may have mortgage-debentures, which are charges of some kind on property. You may have debentures which are bonds; and, if this instrument were under seal, it would be a debenture of that kind. You may have a debenture which is nothing more than an acknowledgment of indebtedness. And you may have a thing like this, which is something more; it is a statement by two directors that the company will pay a certain sum of money on a given day, and will also pay interest half-yearly at certain times and at a certain place, upon production of certain coupons by the holder of the instrument. I think any of these things which I have referred to may be debentures, within the Act.”

The principal sum secured by a debenture may be made payable at a certain time, or after being drawn for redemption, or after notice; in such case the debenture is called ‘terminable.’ Or the principal may be made payable if default is made in the payment of interest, or if the company is wound up (*c*); in such case the debenture is called ‘perpetual.’ It must not be really perpetual, which would mean the grant of a perpetual annuity by the company; that, in the absence of express power, or if not falling within the objects of the company, would be beyond its powers—*ultra vires* (*d*).

The debenture being for a fixed amount, as £50 or £100, for the convenience of lenders many companies issue instead ‘debenture stock,’ which is issued for any amount (*e*).

Debenture
stock.

Railway and other companies, constituted under special

(*c*) See form in Palmer’s Company Precedents, 267; and see note, p. 274.

Proprietors, L. R. 6 Eq. 446.

(*d*) See *per Giffard*, V.-C., in *Hopkins v. Worcester & Birmingham Canal*

(*e*) See forms and notes, Palmer’s Company Precedents, 279.

Chap. VII. Acts incorporating the Companies' Clauses Acts, are empowered to raise part of their authorised loan capital by issuing 'debenture stock' in prescribed form (*f*). A transferee may sue at law in his own name; under the general Act the property in the bond is transferred under the special power of transfer, with all the transferor's right and interest and benefit therein (*g*).

A signability. A debenture, being a chose in action and assignable only in equity, is *prima facie* assignable only subject to the equities existing between the original parties to the contract; but that is a rule which will yield when it appears from the nature or terms of the contract that it must have been intended to be assignable free from and unaffected by such equities (*h*). Such intention has been inferred by the debenture being expressed to be payable to the original contractee or the bearer (or holder) (*i*); but this will not enable the bearer, although a holder for value, to sue the company in his own name, and recover against them, where they have refused payment because he had bought, although in good faith without notice, from one who had stolen it (*k*). In such an action brought by the holder of a debenture, payable to bearer, in his own name against the Crédit Foncier of England who had issued the debenture, and which was defended in their name by one Macken, to whom the company had originally issued the debenture and who

(*f*) See 8 & 9 Vict. c. 16, ss. 45, 46, 47, 49; 26 & 27 Vict. c. 118, ss. 22, 34; and 32 & 33 Vict. c. 48, ss. 1—4; and, as to railways, 29 & 30 Vict. c. 108, ss. 10, 14—18; and 30 & 31 Vict. c. 127, s. 26. See 2 Da. ii. 673, 678. As to difference between shares and stock, see *post*, p. 165.

(*g*) *Vertue v. East Anglian Rail.*

Co., 5 Ex. 280.

(*h*) *In re Agra and Masterman's Bank*, per Cairns, L.J., L. R. 2 Ch. Ap. 397.

(*i*) *In re Blakely Ordnance Co.*, L. R. 3 Ch. Ap. 154.

(*k*) *Crouch v. Crédit Foncier of England*, L. R. 8 Q. B. 374.

had indemnified them, Blackburn, J., delivered the following exhaustive judgment upon the question whether the plaintiff could maintain the action (*l*):— Chap. VII.

“ We think that the form of the instrument shews that the defendants did contract with Macken, to whom they originally issued this instrument, to pay the money to the bearer of this instrument, and (wholly irrespective of any custom), they were competent to make any stipulations they pleased with Macken that would affect their own rights and his only. If Macken had sued them, a plea, that they had paid the money to the bearer without any notice that he was not entitled to it, would be good, if, on the true construction of the instrument, it is stipulated that the receipt of the bearer giving up the instrument should be a sufficient discharge for the company; for they were quite competent to stipulate to that effect. And if Macken were suing in his own name for the benefit of an assignee, as in *Higgs v. Assam Tea Co.* (*m*); or if the assignee were proceeding in equity in his own name, as in *In re Blakely Ordnance Co.* (*n*); *In re Natal Investment Co.* (*o*); *In re General Estates Co., Ex parte City Bank* (*p*); and *In re Imperial Land Co. of Marseilles* (*q*); and the defendants set up some equitable defence, good against the original contractee, and therefore generally good against the assignee also, it would be a good answer to say that the defendants had, with a view to induce persons to become assignees of such instruments, represented that there were no such equities, and that the now holder was induced to take this instrument on the faith of that representation. That would amount to an estoppel at law: *In re Bahia and San Francisco Railway Co.* (*r*). And in *In re Blakely Ordnance Co.* (*s*), it was held that it was a good answer in equity. In *In re Natal Investment Co.* (*t*), Lord Cairns, C., as we understand him, thought that the mere fact of making an instrument payable to order did not amount to such a repre-

(*l*) *Crouch v. Crédit Foncier of England*, L. R. 8 Q. B. 385.

(*m*) L. R. 4 Ex. 387.

(*n*) L. R. 3 Ch. Ap. 154.

(*o*) L. R. 3 Ch. Ap. 355.

(*p*) L. R. 3 Ch. Ap. 758.

(*q*) L. R. 11 Eq. 478.

(*r*) L. R. 3 Q. B. 584; and see *Hart v. Frontino, &c., Mining Co.*, L. R. 5 Ex. 111.

(*s*) L. R. 3 Ch. Ap. 154.

(*t*) L. R. 3 Ch. Ap. 358.

Chap. VII. sentation, but he did not dispute that, if made out, it would produce the effect contended for, or say that such a provision was beyond the competency of the parties. We have not now to consider whether the form of this debenture is such as to amount to such a representation or not. If it does, the *Crédit Foncier* had full power to alter or abandon their own rights; but the plaintiff is obliged to contend, in this case, that they had also power to alter and abandon the rights of those who might become holders of the instrument, and to declare that such persons should, contrary to the general rule of law, hold their property on a precarious title, liable to be divested if a thief or finder could find a *bonâ fide* purchaser for the debenture. No authority has been cited to shew that it is within the competency of private persons by their contract to attach such an incident to any property.

“He is also obliged to contend that they could give a right of action in his own name to any holder, though the general law would give no such right of action to the holders. There is no decision or authority that it is competent to a party to create by his own act a transferable right of action on a contract. It is enough to refer to *Dixon v. Bovill* (u), and *Thompson v. Dominy* (x), as authorities that he cannot, irrespective of custom, so create it.

“We have only further to consider whether the custom or practice of trade to treat such instruments as negotiable makes any difference. We must take it as admitted (whether truly or not we know not), that such a custom has prevailed of late years; but as the instruments themselves are only of recent introduction, it can be no part of the law merchant. Incidents, which the parties are competent by express stipulation to introduce into their contracts, may be annexed by custom, however recent, provided that it be general, on the ground that they are tacitly incorporated in the contract. If the wording of an instrument is such as to exclude this tacit incorporation, no usage can annex the incident. But where the incident is of such a nature that the parties are not themselves competent to introduce it by express stipulation, no such incident can be annexed by the tacit stipulation arising from usage. It may be so annexed by the ancient law merchant, which forms part of the law, and of which

(u) 3 Macq. 1.

(x) 14 M. & W. 403.

the Courts take notice. Nor, if the ancient law merchant annexes the incident, can any modern usage take it away. Chap. VII.

* * * * *

“We have already intimated our opinion that it is beyond the competency of the parties to a contract by express words to confer on the assignee of that contract a right to sue in his own name. And we also think it beyond the competency of the parties by express stipulation to deprive the assignee of either the contract or the property represented by it, of his right to take back his property from any one to whom a thief may have transferred it, even though that transferee took it *bonâ fide* and for value. As these stipulations, if express, would have been ineffectual, the tacit stipulations implied from custom must be equally ineffectual.”

Debentures issued by any mortgage, loan, or other incorporated company, and secured upon the capital, stock or goods, chattels and effects of such company, are excepted from the operation of the Bills of Sale Act, 1882 (*y*). So, if the debenture is secured by a charge not contained in itself but in a deed referred to on the debenture (one of the conditions subject to which it is expressed to be issued), the equitable charge in favour of the debenture-holder will not be invalidated by the non-registration of the deed (*z*). But as against an execution creditor, or a person claiming under a duly registered bill of sale, such trust deed, or the debenture if itself containing a charge of chattels, must it seems be registered under the Bills of Sale Act, 1878 (*a*). Registration.
Bills of Sale
Act, 1882.

All mortgages and charges specifically affecting the property of a limited company must, under the Companies Act, 1862 (*b*), be entered on the register of the company to be kept for such purpose, and which is to be open for Companies
Act, 1862.

(*y*) 45 & 46 Vict. c. 43, s. 17. See *Brocklehurst v. Rail. Printing & Publishing Co.*, W. N. (1884), 70.
 (*z*) *Ross v. Army & Navy Hotel Co.*, L. R. 34 Ch. D. 43. (*b*) 25 & 26 Vict. c. 89, s. 43.
 (*a*) 41 & 42 Vict. c. 31, ss. 4, 10.

Chap. VII. inspection. Heavy penalties are imposed upon the officers neglecting to register or refusing inspection, but the mortgage or charge itself is not affected by want of registration.

Companies
Clauses
Consolidation
Act, 1865.

Similar provisions are contained in the Companies Clauses Consolidation Act, 1845, for the registration of mortgages and bonds affecting the property of companies incorporated under that Act (*c*).

II. Foreign
bond.

The law applicable to our English instrument, as a debenture, made by an English company in England, does not apply to the obligations of foreign and colonial governments who create a public debt, the title to portions of which is by them made to depend on the possession of bonds expressed to be transferable to the bearer or holder; there cannot properly be said to be any right of action on such instruments at all, although the holder has a claim on a foreign government (*d*). Such bonds, however, have been held to be marketable securities in this kingdom, saleable and transferable by delivery only; and the bearers have always been deemed and reputed to be, and have always been dealt with as being, legally entitled to the principal monies secured by the bonds respectively, and to the interest or dividends from time to time arising or accruing in respect of the same (*e*): they are like exchequer bills, bank notes, or bills of exchange indorsed in blank (*f*). But, unless a custom to the contrary in this

(*c*) 8 & 9 Vict. c. 16, ss. 45—49; see *post*, p. 164. As to the enforcement of debentures by having a receiver appointed, and by personal judgment, see *Gardner v. London, Chatham & Dover Rail. Co.*, L. R. 2 Ch. Ap. 201; *Bowen v. Brecon Rail. Co.*, 3 Eq. 541; *Hope v. Croydon & Norwood Tramways Co.*, 34 Ch. D. 30; and 2 Dav. ij. 678,

(*d*) See *Crouch v. Crédit Foncier of England*, per Blackburn, J., L. R. 8 Q. B. 384; and per Lord Selborne in *Goodwin v. Roberts*, 1 Ap. Ca. 494.

(*e*) *Att.-Gen. v. Bouvens*, 4 M. & W. 171. See *Easton v. London Joint Stock Bank*, L. R. 34 Ch. D. 95.

(*f*) *Gorgier v. Mievill*, 3 B. & C. 45.

country is shewn, the bonds without the coupon sheets are not negotiable, so as to be payable to bearer and transferable by delivery (*g*). Chap. VII.

Similarly the scrip of a foreign government issued by it through its agents on negotiating a loan, (which scrip promises to give to the bearer, after all instalments have been duly paid, a bond for the amount paid with interest), is a negotiable instrument, passing by mere delivery to a *bonâ fide* holder for value, who obtains a title to it independent of the title of the person from whom he took it (*h*). Therefore, where the purchaser of Russian scrip, forming part of a loan then being raised by the Russian Government, left the scrip with his broker to be exchanged for bonds or disposed of as he (the purchaser) might direct, who deposited it with bankers as security for a loan to himself; it was held that the original purchaser could not set up his title against that of the bankers. The scrip was in the form following:—

“Imperial Government of Russia. Issue of 15,000,000*l.* sterling, nominal capital, in 5 per cent. Consolidated Bonds of 1873. Negotiated by Messrs. N. M. Rothschild & Sons, London, and Messrs. De Rothschild, Brothers, Paris. Bearing interest half yearly, payable in London from the 1st of December, 1873.

“Scrip for 100*l.* stock, No. . Received the sum of 20*l.*, being the first instalment of twenty per cent. upon one hundred pounds stock; and on payment of the remaining instalments at the period specified the bearer will be entitled to receive a definitive bond or bonds for one hundred pounds, after receipt thereof, from the Imperial Government. London, 1st of December, 1873.”

Under the County Debentures Act, 1873 (*i*), which was III. County debentures.

(*g*) *Picker v. London & County Banking Co.*, L. R. 18 Q. B. D. 515. Ca. 476. See also *Easton v. London Joint Stock Bank*, 34 Ch. D. 95.

(*h*) *Goodwin v. Roberts*, L. R. 1 Ap. (*i*) 36 & 37 Vict. c. 35.

Chap. VII. passed to amend the law relating to securities for loans contracted by county authorities, debentures in prescribed form and subject to prescribed conditions may be issued by way of security for a principal sum and interest to be charged on the county rate.

The principal sum may be made payable to bearer, in which case the debenture will be transferable by delivery; or to a person named in it, his executors, administrators or assigns, in which case it is called a 'nominal' debenture and transferable only by deed in prescribed form (*k*). There is to be annexed to the debentures, or issued in respect thereof, coupons, entitling the bearer to receive interest upon presenting the same at a time and place specified (*l*).

A register of all debentures is to be kept and to be open to inspection, and the transfer of nominal debentures is also to be registered; in the latter case, after entry in the register, the transferee is entitled to the full benefit of the debenture, as if he had been the original nominee (*m*).

Land
mortgage
debentures.

Also under the Mortgage Debenture Act, 1865 (*n*), which was passed to enable companies formed for the purpose of lending money on the security of real property in connection with the Land Registry Office in which they were to be registered, the mortgage debenture could be transferred only by indorsement in prescribed form and the transfer must be registered; after entry upon the register the full benefit of the original mortgage debenture was given to the transferee (*o*).

IV. Policies
of life
assurance.

Policies of Life Assurance are also choses in action now assignable by statute.

(*k*) Ss. 5, 13.

(*l*) S. 5.

(*m*) Ss. 11, 14.

(*n*) 28 & 29 Vict. c. 78.

(*o*) Ss. 37, 38.

The contract, commonly called life assurance, is not one of indemnity, but a contract by the assurer to pay a certain sum on the happening of a certain event, as the death of the assured, in consideration of the payment of the premiums meanwhile (*p*). The 'policy' is the instrument in which the contract is set forth. Chap. VII.

Insurances on marriages, births, christenings, and service, were prohibited in 1710 by the statute 9 Anne, c. 6, s. 57 (*q*). 9 Anne, c. 6,
s. 57.

It being found that the making insurances on lives, or other events, wherein the assured had no interest, introduced a "mischievous kind of gaming," in 1774 the statute, 14 Geo. III. c. 48, was passed, requiring the person insuring to have an interest, and such person or the person on whose behalf the policy was made to be mentioned in it; but the Act did not extend to prevent individuals effecting *bonâ fide* assurances on their own lives. It enacted:— 14 Geo. III.
c. 48.

S. 1. "No insurance shall be made by any person or persons, bodies politick or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be made, shall have no interest, or by way of gaming or wagering; and that every assurance made contrary to the true intent and meaning hereof shall be null and void to all intents and purposes whatsoever.

S. 2. "It shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons, name or names interested therein, or for

(*p*) See *per* Parke, B., in *Dalby v. India & London Life Assurance Co.*, 15 C. B. 387; and 2 Sm. L. Ca. 282; and *per* Wood, V.-C., in *Law & London Indisputable Life Policy*, 1 K. & J. 228.

(*q*) The rest of the statute was repealed by 30 & 31 Vict. c. 59.

Chap. VII.

whose use, benefit or on whose account such policy is so made or underwrote.

S. 3. "In all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events."

The period to which s. 3 refers is that of effecting the policy. The only effect of the statute in that respect is to make the assured value his interest at its true amount when he makes the contract; its subsequent diminution or extinction will not affect his right to recover to the limit mentioned in the policy (*r*).

30 & 31 Vict.
c. 144.

The Policies of Assurance Act, 1867 (*s*), was passed to enable assignees of such policies to sue thereon in their own names. An assignment may be made by endorsement on the policy or by a separate instrument in the prescribed form, or to the same effect (*t*). Any person becoming entitled by assignment or other derivative title to a policy, and possessing at the time of action brought the right in equity to receive and to give an effectual discharge to the assurance company, may sue at law in his own name to recover the monies assured; and in any action a defence on similar grounds may be relied upon, or a reply to such defence on similar grounds may be relied upon, in the same manner and to the same extent as in any other personal action (*u*). But no assignment will confer on the assignee, his executors, administrators, or assigns, any right to sue for the monies assured until a written notice of the date

(*r*) *Per* Parke, B., in *Dalby v. India & London Life Assurance Co.*, 15 C. B. 391.

(*s*) 30 & 31 Vict. c. 144.

(*t*) S. 5.

(*u*) Ss. 1, 2.

and purport of the assignment has been given to the assurance company at their principal place of business; and the date on which such notice is received regulates the priority of all claims under any assignment (*x*); this, however, applies only as between the company and the persons interested in the policy, and does not affect the rights of those persons *inter se*, so that where a first incumbrancer on a policy has not given such notice, but the second incumbrancer with notice of the prior charge has, the second incumbrancer will not obtain priority (*y*). As expressed by North, J. :—

“The statute was not intended to affect the rights of persons claiming interests in the money outside the insurance office. It was intended to give a simpler remedy against an insurance office, and also to give facilities to insurance offices in settling claims by enabling them to recognise as the first claim the claim of the person who first gave such notice as required by the statute. It was not intended in my opinion to enact that a person who had advanced money upon a second charge with notice of the first, and made subject to it, should by giving statutory notice to the office exclude the person who had the prior incumbrance.”

An agreement in writing to execute on request an effectual mortgage of a policy deposited as security for a loan is not an assignment within the meaning of the Act (*z*).

Under the Married Women's Property Act, 1882 (*a*), a married woman may, by virtue of the power of making contracts therein conferred upon her (*b*), effect a policy

Married
Women's
Property
Act, 1882.

(*x*) S. 3.

(*y*) *Newman v. Newman*, L. R. 28 Ch. D. 681.

(*z*) *Spencer v. Clarke*, L. R. 9 Ch. D. 137.

(*a*) 45 & 46 Vict. c. 75, s. 11; following 33 & 34 Vict. c. 93, s. 10. See

In re Adam's Policy Trusts, L. R. 23 Ch. D. 525; *In re Soutar's Policy Trust*, 26 Ch. D. 236. See also Bankruptcy Act (46 & 47 Vict. c. 52), ss. 47, 152.

(*b*) *Ante*, p. 44.

Chap. VII. upon her own life, or the life of her husband, for her separate use. The Act also contains the following provision for enabling husband or wife to effect a policy by way of settlement for the benefit of the other and of the children :—

S. 11. "A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife or of his children, or of his wife and children or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the monies payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts: Provided, that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the monies payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the monies payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the monies payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the Trustee Act, 1850 (c), or the Acts amending and extending the same. The receipt of a trustee

or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part."

Chap. VII.

Policies of Marine Assurance are also choses in action now assignable by statute. The contract of marine assurance, unlike that of life assurance, is one of indemnity. It has been defined as one whereby one party, for a stipulated sum, undertakes to indemnify the other against loss arising from certain perils or sea-risks, to which his ship, merchandize, or other interest, may be exposed during a certain voyage, or a certain period of time (*d*). The party indemnifying, called the insurer, generally comprises several persons, called 'underwriters,' because they subscribe the policy; and if the ship, or goods, &c., perish, or are lost in whole or in part, every underwriter has to make recompense either to the extent of his subscription, or *pro rata* in proportion thereto (*e*).

V. Policies of marine assurance.

At common law the assured was not required to prove any interest in the subject-matter, if the policy were granted 'interest or no interest' (*f*). But to counteract the injurious effect of such assurances, in 1745-6 the statute, 19 Geo. II. c. 37, was passed prohibiting the same for the reasons thus expressed in the Preamble:—

19 Geo. II. c. 37.

"Whereas it hath been found by experience that the making assurances, interest or no interest, or without further proof of interest than the policy, hath been productive of many pernicious practices, whereby great numbers of ships, with their cargoes, have

(*d*) Arnould on Marine Insurance, 15.
(*e*) Smith's Mercantile Law, bk. iii.

ch. iv.
(*f*) *Per* Lord Hardwicke, L.C.,
Sadlers Co. v. Badcock, 2 Atk. 556.

Chap. VII.

either been fraudulently lost and destroyed, or taken by the enemy in time of war; and such assurances have encouraged the exportation of wooll, and the carrying on many other prohibited and clandestine trades, which by means of such assurances have been concealed, and the parties concerned secured from loss, as well to the diminution of the public revenue as to the great detriment of fair traders, and by introducing a mischevious kind of gaming or wagering, under the pretence of assuring the risque on shipping and fair trade, the institution and laudable design of making assurances hath been perverted, and that which was intended for the encouragement of trade and navigation has, in many instances, become hurtful of and destructive to the same: For remedy whereof, &c."

It enacted that :—

S. 1. "No assurance or assurances shall be made by any person or persons, bodies corporate or politick, on any ship or ships belonging to his Majesty, or any of his subjects, or on any goods, merchandizes, or effects laden or to be laden on board of any such ship or ships, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the assurer; and that every such assurance shall be null and void to all intents and purposes."

Assurances made by or for the owners of private ships of war fitted solely to cruise against the enemies of the Crown were excepted (*g*); and also assurances on merchandizes or effects from any places in Europe or America in the possession of the crowns of Spain or Portugal (*h*). Foreign ships, though not expressly excepted, are not included within the statute.

(*g*) 19 Geo. II. c. 37, s. 2.

(*h*) S. 3. In ss. 6 and 7 are provisions for compelling plaintiffs in actions on policies to declare their

interests, and enabling persons sued to discharge themselves by bringing money into Court.

What may be insured is thus comprehensively stated in **Chap. VII.**
 Smith's Mercantile Law (i) :—

What may be insured

"Ships, goods, a special property therein—*e.g.*, that of a carrier, or money expended by a captain for the ship's use, his commission and privileges, expected profits, bottomry or respondentia interest, freight, have all been held fit subjects of marine insurance. Under the term freight may be insured the benefit an owner would derive from carrying his own goods in his own vessel; but, in order to recover under a policy upon freight, the assured must prove, that, but for the intervention of a peril insured against, some freight would have been earned, by showing, either that some goods were put on board, or that there was some contract for doing so. There are many other legal subjects of insurance: a defeasible or inchoate interest may be insured, as well as one absolute and perfect. In a word, any person who has an interest in the subject-matter of insurance may be insured to the extent of that interest; and any person may be said to have an interest who may be injured by the risks to which that subject-matter is exposed, or would only, but for them, have a moral certainty of advantage."

'Bottomry' is an agreement whereby the owner of a ship or his agent, in consideration of a sum of money advanced for the use of the ship, undertakes to repay the same with interest if the ship terminate her voyage successfully; and he thereby binds or hypothecates the ship for the performance of his contract. If the loan be secured, not on the vessel but on the goods or merchandize laden on her, it is called 'Respondentia' (*k*). **Bottomry—respondentia.**

The policy may be either (1) 'open,' that is, where the value is not inserted and must be proved, or (2) 'valued,' that is, where the value is agreed on and stated in the policy. **Policies open, valued.**

In order to put a stop to the practice of effecting policies **28 Geo. III c. 56.**

(i) Bk. iii, ch. iv. § 3.

(k) Smith's Mercantile Law, bk. iii. ch. vii.

Chap. VII. in blank, without inserting the names either of the party for whom or by whom they were effected, an Act was passed in 1784 to remedy the evil; but, going beyond the mischief, it was repealed in 1787, and the statute, 28 Geo. III. c. 56, which remains in force, was enacted in its place. It provided as follows :—

S. 1. “ It shall not be lawful for any person or persons to make or effect, or cause to be made or effected, any policy or policies of assurance upon any ship or ships, vessel or vessels, or upon any goods, merchandizes, effects, or other property whatsoever, without first inserting or causing to be inserted in such policy or policies of assurance the name or names or the usual stile and firm of dealing of one or more of the persons interested in such assurance, or without, instead thereof, first inserting or causing to be inserted in such policy or policies of assurance the name or names or the usual stile and firm of dealing of the consignor or consignors, consignee or consignees, of the goods, merchandizes, effects or property, so to be insured, or the name or names or the usual stile and firm of dealing of the person or persons residing in Great Britain who shall receive the order for and effect such policy or policies of assurance, or of the person or persons who shall give the order or direction to the agent or agents immediately employed to negotiate or effect such policy or policies of assurance.”

Assignment
of policy.

The transferee of an insurable interest will not take the benefit of the policy unless at the time of transfer the policy also be assigned, expressly or impliedly (*l*). Assignment of a marine policy, prior to the statute about to be mentioned, was made by indorsement on the policy or by delivery merely of the policy; and the assignee might sue in the name of the assignor, or of the brokers named in it

(*l*) *N. of England Oil Cake Co. v. Archangel Insurance Co.*, L. R. 10 Q. B. 255, *per* Quain, J.; Arnould on Marine Insurance, vol. i. 102,

as effecting the policy, subject to all rights of defence that might be set up against the nominal plaintiff (*m*). Chap. VII.

In 1868 the “Policies of Marine Assurance Act” (*n*) was passed to enable assignees to sue in their own names. It was provided that assignment might be made by indorsement on the policy in the words or to the effect of the form in the schedule (*o*); also that when a policy is assigned so as to pass the beneficial interest in it to any person entitled to the property insured, the assignee may sue in his own name, and the defendant may make any defence which he would have been entitled to make if the action had been brought in the name of the person by whom or for whose account the policy was effected (*p*). 31 & 32 Vict.
c. 86.

The right given by the above statute to sue in the assignee’s own name only applies in cases where he could have sued in the assignor’s name; so that, where on a contract of sale of goods insured the policy was not assigned or agreed to be assigned, an effective assignment could not be made after the interest of the assignor had ceased, entitling the assignee to sue (*q*). But the mere fact of the assignment having been after loss will not debar the assignee from suing under the statute (*r*). In an action by the assignee the insurers cannot set off a debt to them by the assured contracted after the assignment (*s*).

(*m*) Arnould on Marine Insurance, vol. i. 103.

(*n*) 31 & 32 Vict. c. 86.

(*o*) S. 2.

(*p*) S. 1.

(*q*) *N. of England Oil Cake Co. v. Archangel Insurance Co.*, L. R. 10 Q. B. 249.

(*r*) *Lloyd v. Fleming*, L. R. 7 Q. B. 299.

(*s*) *Pellas v. Neptune Marine Insurance Co.*, L. R. 5 C. P. D. 34. As to

the warranties implied when policies are effected, and their breach, see notes to *Dixon v. Sadler* and *Woolridge v. Boydell*, Tudor’s L. Ca. Mar. Law, 136; as to total loss and the law of abandonment, see *Roux v. Salvador*, *ib.* 184; as to the underwriters’ liability, or ‘adjustment of average,’ see *Lewis v. Rucker*, *ib.* 246; and as to return of premiums where not liable, see *Tyrie v. Fletcher*, *ib.* 265.

Chap. VII.

VI. Policies
of fire
assurance.

Policies of Fire Assurance differ from policies of life or marine assurance, for, as expressed by Lord Kenyon, they “are not in the nature of them assignable, nor intended to be assigned from one person to another, without the consent of the office” (*t*). Nor have they been made assignable by Act of Parliament. But policies of assurance against fire, like those against marine risks, are contracts of indemnity, the assurer engaging to make good, within certain limited amounts, the losses sustained by the assured in their buildings and effects (*u*). And, as in all cases of assurance, whether on lives, ships, or other things, the assurer must be informed of all material facts limiting the subject-matter by the party effecting the assurance (*x*).

It is necessary that the party insuring should have an interest or property at the time of insuring, and at the time the fire happens (*y*).

14 Geo. III.
c. 78.

For preventing mischief by fire within the cities of London and Westminster and other places within the weekly bills of mortality, and the parishes of St. Marylebone, Paddington, and St. Pancras, and St. Luke at Chelsea in the County of Middlesex, “in order to deter and hinder ill-minded persons from wilfully setting their houses or other buildings on fire with a view of gaining to themselves the insurance money, whereof the lives and fortunes of many families may be lost or endangered,” in 1774 a statute, 14 Geo. III. c. 78, was passed, containing a provision applicable to buildings within those limits, enabling

(*t*) *Lynch v. Dayrell*, 3 Bro. Par. Ca. 497; quoted by Lord Hardwicke in *Sadlers Co. v. Badcock*, 2 Atk. 557.

(*u*) *Dalby v. Indian & London Life Assurance Co.*, 15 C. B. 387, per Parke, B.

(*x*) *Lindenau v. Desborough*, 8 B. & C. 587.

(*y*) *Sadlers Co. v. Badcock*, 2 Atk. 555; and see 14 Geo. III. c. 48, *ante*, p. 151.

the offices to cause the insurance money to be laid out in repairs. It was enacted :—

S. 83. “ It shall and may be lawful to and for the respective governors or directors of the several insurance offices for insuring houses or other buildings against loss by fire, and they are hereby authorised and required upon the request of any person or persons interested in or entitled unto any house or houses or other buildings which may hereafter be burnt down, demolished, or damaged by fire, or upon any grounds of suspicion that the owner or owners, occupier or occupiers, or other person or persons, who shall have insured such house or houses or other buildings, have been guilty of fraud or of wilfully setting their house or houses or other buildings on fire to cause the insurance money to be laid out and expended as far as the same will go towards rebuilding, reinstating, or repairing such house or houses or other buildings so burnt down, demolished, or damaged by fire, unless the party or parties claiming such insurance money shall, within sixty days next after his, her, or their claim is adjusted, give a sufficient security to the governors or directors of the insurance office where such house or houses or other buildings are insured, that the same insurance money shall be laid out and expended as aforesaid, or unless the said insurance money shall be in that time settled and disposed of to and amongst all the contending parties to the satisfaction and approbation of such governors or directors of such insurance office respectively.”

Chap. VIII.

CHAPTER VIII.

CHOSES IN ACTION (*continued*).

Shares in
companies.

REFERENCE has been made to debentures and debenture stock issued by Joint Stock Companies (*a*). The shares in such companies are also instances of incorporeal personal property. Prior to 1844, when the first Act for the Registration, Incorporation, and Regulation of Joint Stock Companies was passed (*b*), companies could only be incorporated by Charter conferred by Letters Patent from the Crown or by Act of Parliament, which respectively determined the nature and incidents of the shares to be held therein (*c*); and they were generally declared to be in the nature of personal estate (*d*).

Letters
Patent
Act, 1837.

The powers of the Crown were extended in 1837 by an Act for better enabling Her Majesty to confer certain powers and immunities on trading and other companies (*e*); by which, after reciting that divers associations were and might be formed for trading and other purposes, some of which associations it would be inexpedient to incorporate by Royal Charters, although it would be expedient to confer on them some of the privileges of and incident to corporations incorporated by Royal Charters, and also to invest such associations or some of them with certain other powers and privileges: and that it would also be expedient to extend the power of Her Majesty in reference to the creation

(*a*) *Ante*, pp. 142 *et seq.*

(*b*) 7 & 8 Vict. c. 110.

(*c*) As to corporations, see M. L.

R. P. 93 *et seq.*

(*d*) See M. L. R. P. 15.

(*e*) 1 Vict. c. 73.

of corporations, and to the conferring of privileges upon corporations, and upon other bodies or companies enabled to sue and be sued, it was enacted :—

Chap. VIII.

S. 2. “ That it shall and may be lawful for Her Majesty, and her heirs and successors by Letters Patent, to be from time to time for that purpose issued under the Great Seal of the United Kingdom of Great Britain and Ireland, or in Scotland under the Seal appointed by the Articles of Union, to be used instead of the Great Seal thereof, to grant to any company or body of persons associated together for any trading or other purposes whatsoever, and to the heirs, executors, administrators, and assigns of any such persons, although not incorporated by such Letters Patent, any privilege or privileges which, according to the rules of the common law, it would be competent to Her Majesty, her heirs and successors, to grant to any such company or body of persons in and by any charter of incorporation.”

It was also enacted that Letters Patent so granted might provide that suits should be carried on in the name of one of the officers of any company appointed for the purpose (*f*) ; that the individual liability of members of a company might be restricted by Letters Patent (*g*) ; that every company should be entered into by a deed of partnership or agreement in writing, in which the number of shares should be specified, also the names or styles of the members, its business, and the place of carrying it on (*h*) ; that on the transfer by deed or writing of any share, notice in writing should be given to the company by the transferee (*i*) ; that no person should be entitled to share in the profits until registered as a member (*k*) ; and that a person ceasing to be a member should continue liable until a return of the

(*f*) 1 Vict. c. 73, s. 3.

(*g*) S. 4.

(*h*) S. 5.

(*i*) S. 9.

(*k*) S. 20.

Chap. VIII. transfer or other fact whereby he ceased to be a member should be registered (*l*).

Companies
Clauses
Consolidation
Act, 1845.

As regards companies incorporated by Act of Parliament, an Act was passed in 1845 for consolidating in one Act certain provisions usually inserted in the special Act of incorporation with respect to the constitution of companies incorporated for carrying on undertakings of a public nature, commonly known as the Companies Clauses Consolidation Act, 1845 (*m*). Its object is thus clearly stated in the preamble :—

“ It is expedient to comprise in one general Act sundry provisions relating to the constitution and management of joint stock companies usually introduced into Acts of Parliament authorising the execution of undertakings of a public nature by such companies, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves.”

The Act is made applicable to all joint stock companies thereafter incorporated by Act of Parliament, except so far as any of its provisions are varied or excepted by such Act (*n*). The capital is to be divided into shares of the number and amount prescribed by the special Act, and all shares are to be personal estate and transmissible as such (*o*). There is to be a registry of shareholders, and certificates of shares are to be issued to the shareholders (*p*). The shareholders may, subject to the regulations of the Act and of the special Act, sell and transfer their shares ; and every transfer is to be by deed duly stamped, in which the consideration is to

(*l*) 1 Vict. c. 73, s. 21.

(*m*) 8 Vict. c. 16.

(*n*) S. 1.

(*o*) Ss. 6, 7.

(*p*) Ss. 9, 11.

be truly stated; but no transfer is to be made until all calls Chap. VIII. made thereon have been paid; and the transfer is to be duly registered (*q*). Provision is made for transmission otherwise than by transfer, as on marriage, by will, &c.; and the company are not bound to regard trusts (*r*). The company may from time to time make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they think fit (*s*).

Also the company is empowered to convert the whole Stock. or any part of its fully paid-up shares into stock (*t*); and the holders may transfer the whole or any part of their interests in the same manner and subject to the same regulations according to which any shares might be transferred under the provisions of the Act, or of the special Act; and such transfers are to be registered; and the shareholders are to be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock (*u*).

Question arose as to the effect of consolidating shares into stock, whether a bequest of shares in a railway company included stock. In the judgments of the Court of Appeal and of the House of Lords, deciding that the bequest included stock, the difference between shares and stock and the effect of consolidation were thus explained.

Lord Cairns, L. C. said (*v*) :—

“It is to be observed that the term ‘stock,’ or ‘capital stock,’ which is there used, obviously is derived from the consideration

(*q*) 8 Vict. c. 16, ss. 14, 15, 16.

(*r*) Ss. 18, 19, 20.

(*s*) S. 22.

(*t*) See *ante*, p. 143.

(*u*) 8 Vict. c. 16, ss. 61, 62, 63, 64.

(*v*) *Morrice v. Aylmer*, L. R. 10 Ch. Ap. 154.

Chap. VIII. that these were what were called joint stock companies, and that 'stock' was the short name for 'joint stock,' and joint stock, in my opinion, is only another name for 'shares,' because the owner of part of the capital of a company is an owner of a part or a share of the joint stock. The use of the term 'stock' appears to me merely to denote that the company have recognised the fact of the complete payment of the shares, and that the time has come when those shares may be assigned in fragments, which for obvious reasons could not be permitted before, but that stock shall still be the qualification, for example, of directors, who must possess a certain number of shares, and that the meetings shall be of the persons entitled to this stock, who shall meet as shareholders, and vote as shareholders, in the proportion of shares which would entitle them to vote before the consolidation into stock.

"If ever there was a case in which the substance is that 'stock' and 'shares' are identical, it is a case of this kind. It appears to me that the doubt which has arisen, has arisen from the circumstance that it has been supposed, without sufficient attention having been paid to these provisions, that stock in a railway had some sort of analogy to stock in the public funds. It has none whatever. It is possible that debenture stock in a railway company may be said to have some analogy to stock in the public funds, but the joint stock capital of a company is a perfectly different thing from stock in the public funds. In my opinion, when a man is an owner of stock in a railway, he is properly said to be a shareholder in the company, and would properly call himself a shareholder in the company."

Sir W. M. James, L.J., said (x) :—

"It is necessary to bear in mind that there is no such thing *in rerum naturâ* as a railway share. It is not such a thing as you can see, or touch, or handle. It is a term which indicates simply a right to participate in the profits of a particular joint stock undertaking. Well, then, stock, or that which is called 'stock,' the thing into which the shares have been consolidated, so far as

(x) *Morrice v. Aylmer*, L. R. 10 Ch. Ap. 155.

regards the interest of one person in that stock, is the right to participate in the profits of the undertaking. Both sets of words 'my railway stock,' 'my railway shares,' mean, etymologically, my right to share. Therefore, if you are construing the will merely upon etymological considerations, the words of the will are strictly and correctly applicable to the particular subject-matter in question before us. But, generally speaking, it is unsatisfactory to deal with words in common use by etymological considerations. If, then, we add to them the common usage of mankind, I am satisfied that there is not a man who has got an interest in any railway in *England*, speaking merely according to the vernacular which he is accustomed to use, who would ever think of describing a stockholder in a railway otherwise than as a shareholder, or who would think that he was speaking incorrectly in describing his stock as a share in that railway, or a meeting of stockholders as a meeting of shareholders."

And Lord Hatherley said (*y*):—

"There is a certain extent of change, as well as consolidation, in these paid-up shares. They are changed from ordinary shares in this respect, that they are no longer incapable of being subdivided. Shares in a company, as shares, cannot be bought in small fractions of any amount, fractions of less than a pound, but the consolidated stock of a company can be bought just in the same way as the stock of the public debt can be bought, split up into as many portions as you like, and subdivided into as small fractions as you please. And that, no doubt, is of great importance in selling the stock of a railway company. Independently of that, however, it possesses all the qualities of shares. It is, in fact, simply a set of shares put together in a bundle, with this peculiarity added to them, that they are transferable in a manner in which you cannot transfer the ordinary shares of a railway company. That being the case, as they can be thus fractionally dealt with, a provision is added with respect to this process of consolidation of shares, that as regards the power of voting there shall be no voting upon these fractions, but that the voting shall

(*y*) *Morrice v. Ayllmer*, L. R. 7 E. & I. Ap. 724.

Chap. VIII. go on in the same way as if the stock only represented a definite number of shares of corresponding amount taken at their nominal value independently of the fraction ; that is to say, you may have twenty shares' worth, if I may so express it, of this consolidated stock, *plus* some small fractional amount ; in that case you will only vote as a holder of twenty shares. But in all other respects you will be just as you were before the consolidation of your shares.

"What, then, is the result of the consolidation of your shares ? You obtain a dividend in respect of the whole amount of those shares on the profits of the company ; you are entitled to share in those profits. It is not at all analogous, as the learned counsel who spoke last on behalf of the appellant suggested, to the interest on the public debt which is paid to the holders of the public stocks and funds ; but it is an actual partnership. The partnership is complete with all the same accessories, except as to that simple point of voting in respect of a fraction of a share, as those with which the holders of shares remaining still unconverted hold them."

The Com-
panies Acts,
1862 to 1886.

In 1862 was passed an Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations, to consolidate and amend the laws relating thereto, entitled the Companies Act, 1862 (*z*). By it was repealed the Joint Stock Companies Act, 1844 (*a*), to which reference has been made (*b*), and fifteen other Acts passed in that and subsequent years for the regulation and winding-up of joint-stock companies, including banking companies (*c*). It has been amended by the Sale and Purchase of Bank Shares Act, 1867 (*d*), the Companies Act, 1867 (*e*), the Joint Stock Companies Arrangement Act, 1870 (*f*), the

(*z*) 25 & 26 Vict. c. 89.

(*a*) 7 & 8 Vict. c. 110.

(*b*) *Ante*, p. 162.

(*c*) 25 & 26 Vict. c. 89, s. 205,

Sched. III.

(*d*) 30 Vict. c. 29.

(*e*) 30 & 31 Vict. c. 131.

(*f*) 33 & 34 Vict. c. 104.

Companies Act, 1877 (*g*), the Companies Act, 1879 (*h*), Chap. VIII. the Companies Act, 1880 (*i*), the Companies Act, 1883 (*k*), and (as regards Scotland) the Companies Act, 1886 (*l*).

The first Act limiting the liability of members of joint-stock companies for the debts and engagements of such companies was passed in 1855 (*m*); it was rendered obsolete by subsequent Acts, and repealed by the Statute Law Revision Act, 1875 (*n*). The Joint Stock Companies Act, 1856 (*o*), repealed by the Companies Act, 1862 (*p*), did not apply to persons associated together for the purpose of banking or insurance.

By the Companies Act, 1862 (*q*), partnerships consisting of more than a certain number of persons were prohibited, except as Companies under the Act. It was enacted:—

Application of
Companies
Act, 1862.

S. 4. “No company, association, or partnership consisting of more than ten persons shall be formed, after the commencement of this Act (*r*) for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or by Letters Patent; and no company, association, or partnership consisting of more than twenty persons shall be formed after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act or is formed in pursuance of some other Act of Parliament, or of Letters Patent, or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries” (*s*).

(*g*) 40 & 41 Vict. c. 26.

(*h*) 42 & 43 Vict. c. 76.

(*i*) 43 Vict. c. 19.

(*k*) 46 & 47 Vict. c. 28.

(*l*) 49 Vict. c. 23.

(*m*) 18 & 19 Vict. c. 133.

(*n*) 38 & 39 Vict. c. 66.

(*o*) 19 & 20 Vict. c. 47.

(*p*) 25 & 26 Vict. c. 89, s. 205.

(*q*) S. 4.

(*r*) *i.e.* 2nd Nov. 1862. See s. 2.

(*s*) *i.e.* in Devonshire and Cornwall.

Chap. VIII.

It will be seen that neither banking companies nor insurance companies are excluded from the Act (*t*); the latter are also regulated by the Life Assurance Companies Acts, 1870 to 1872 (*u*). The Act also applies in part to companies formed or registered under the Joint Stock Companies Acts (*x*), and as regards winding-up may apply to any partnership, association, or company, except railway companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under the Act (*y*).

Memorandum
of associa-
tion.

Under the Act seven or more persons associated for any lawful purpose may, by subscribing their names to a Memorandum of Association and registering it, form an incorporated company with or without limited liability (*z*). The memorandum must contain the prescribed statements (*a*), of which the most important are the objects for which the company is to be established, for thereby are its powers limited (*b*), and whether the liability of its members is limited, and if so to what extent, or otherwise (*c*).

Liability of
members.

The liability of the members of a company under the Act may be limited either to the amount, if any, unpaid on their shares, or to such amount as the members may undertake by the memorandum to contribute to the assets of the company in the event of its being wound up (*d*); in the former case the company is said to be 'limited by shares,' in the latter case to be 'limited by guarantee.' Where

(*t*) See also ss. 3, 209.

(*u*) 33 & 34 Vict. c. 61; 34 & 35 Vict. c. 58; 35 & 36 Vict. c. 41; see s. 8.

(*x*) 25 & 26 Vict. c. 89, pts. vi. and vii., and s. 209.

(*y*) *Ib.* pt. viii., ss. 199—204.

(*z*) S. 6.

(*a*) Ss. 8, 9, 10.

(*b*) See *ante*, pp. 114, 142.

(*c*) 25 & 26 Vict. c. 89, ss. 8, 9, 10.

(*d*) S. 7.

no limit is placed on the liability of the members, it is called Chap. VIII. an 'unlimited' company (*e*).

By the Companies Act, 1867, it has been provided that, although the liability of the members is limited, that of the directors or managers, or the managing director may be unlimited (*f*). By the same Act any association about to be formed as a limited company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to the members of the association, may be registered with limited liability without the addition of the word 'limited' to its name (*g*). If a company carries on business when the number of its members is less than seven for a period of six months after the number has been reduced, every person who is a member of the company during the time that it carries on business after such period of six months, and is cognizant of the fact that it is so carrying on the business with fewer than seven members, will be severally liable and may be separately sued for the payment of the whole debts of the company contracted during such time (*h*).

In the case of a company limited by shares the Memorandum of Association may be, and in the case of a company limited by guarantee or unlimited it must be, accompanied by Articles of Association signed by the subscribers to the memorandum, prescribing regulations for the company (*i*).

Articles of
association.

(*e*) 25 & 26 Vict. c. 89, s. 10.

(*h*) 25 & 26 Vict. c. 89, s. 48.

(*f*) 30 & 31 Vict. c. 131, ss. 4—8.

(*i*) S. 14.

(*g*) S. 23.

Chap. VIII. In the former case, if the memorandum is not accompanied by articles, or in so far as the articles do not exclude or modify the regulations in Table A. in the first schedule to the Act of 1862, such regulations, so far as applicable, are to be the regulations of the company (*k*).

Incorporation
of company.

Upon registration the members become a body corporate, capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal (*l*).

Shares.
Transfer.

The shares or other interest of any member are personal estate, transferable as provided by the regulations of the company; and each share, where the capital is divided into shares, must be distinguished by its appropriate number (*m*). The names of every member must be registered (*n*). It will be observed that transfer is not, as under the Companies Clauses Consolidation Act, required to be by deed (*o*).

The following is the regulation in Table A. as to transfer:—

Art. 8. "The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof."

Art. 10. "The company may decline to register any transfer of shares made by a member who is indebted to them" (*p*).

Leeman's
Act, 1867.

In order to prevent contracts for the sale and purchase of shares and stock in joint-stock banking companies, of which

(*k*) 25 & 26 Vict. c. 89, s. 15.

(*l*) S. 18. See M. L. R. P. 97, as to holding lands.

(*m*) 25 & 26 Vict. c. 89, s. 22; and see s. 24.

(*n*) Ss. 23, 25, 26, 35; and see

30 & 31 Vict. c. 131, s. 26.

(*o*) See *ante*, p. 164.

(*p*) As to sufficiency of this, see Buckley's Companies Acts, 412; and Palmer's Company Precedents, 124.

the sellers are not possessed or over which they have no control, an Act, commonly called Leeman's Act, was passed in 1867 (*q*), making void all such contracts which do not specify the distinguishing numbers of such shares or stock, or, if there are no distinguishing numbers, the person or persons in whose name or names the same then stand as registered proprietor. Dealers in the Stock Exchange have disregarded this Act as impracticable, at the risk of incurring personal liability. But it has been held that the usage of the Stock Exchange to disregard the Act is unreasonable, and not binding on strangers who do not know such usage (*r*); by following it a stockbroker may render himself liable for a breach of duty in not making a valid contract (*s*). Chap. VIII.

If authorized by its regulations as originally framed, or as altered by special resolution (*t*), any company limited by shares may modify the conditions contained in its memorandum of association, so as to increase its capital by the issue of new shares, or to consolidate and divide its capital into shares of larger amount, or to convert its paid-up shares into stock, or to change its name (*u*). Similarly under the Acts of 1867 and 1877 (*x*), such companies may reduce their capital; also under the Act of 1867 they may by subdivision of shares or any of them, divide their capital or any part of it into shares of smaller amount than is fixed by the memorandum of association (*y*). Alteration of capital, or name.

The Act of 1862, unlike the Companies Clauses Act, does not provide for the making of calls; but that is left to the Payment of capital—calls.

(*q*) 30 Vict. c. 29.
(*r*) *Perry v. Barnett*, L. R. 15 Q. B. D. 388.
(*s*) *Neilson v. James*, L. R. 9 Q. B. D. 546.
(*t*) 25 & 26 Vict. c. 89, ss. 50, 51.
(*u*) S. 12.

(*x*) 30 & 31 Vict. c. 131, ss. 9—20; and 40 & 41 Vict. c. 26. See *Bannatyne v. Direct Spanish Telegraph Co.*, L. R. 34 Ch. D. 287; *In re Direct Spanish Telegraph Co.*, *ib.* 307.
(*y*) 30 & 31 Vict. 3. 131, ss. 21, 22.

Chap. VIII. regulations of the company (z). It has, however, been provided by the Act of 1867 (a), that nothing contained in the principal Act shall prevent any company, if authorised by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things, namely : —

S. 24 (1). “ Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls :

(2.) “ Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made :

(3.) “ Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.”

And it was further enacted :—

S. 25. “ That every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint-stock companies at or before the issue of such shares ” (b).

Also the Act of 1879 (c) provides that a limited company may, by special resolution, declare that any portion of its capital, which has not been already called up, shall not be

(z) See Table A (4)—(7).

(a) 30 & 31 Vict. c. 131, s. 24.

(b) S. 25. See *In re Delta Syndicate*,

Limited, L. R. 30 Ch. D. 153.

(c) 42 & 43 Vict. c. 76, s. 5.

called up except in the event of and for the purpose of the company being wound up. Chap. VIII.

Notice of increase of capital (*e*), also of consolidation, division, or conversion, must be given to the registrar (*f*). Notice of increase of capital, &c.

Further, under the Companies Act, 1867 (*g*), if authorised by its regulations as originally framed, or as altered by special resolution, a company limited by shares may, with respect to any fully paid-up share or stock, issue under their seal a share-warrant to bearer, that is to say, a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the share or shares or stock included in such warrant. Such warrant entitles the bearer to the shares or stock specified in it, which may be transferred by the delivery of the warrant (*h*). Share warrants.

No notice of any trust, expressed, implied, or constructive, is to be entered on the register or be receivable by the registrar (*i*). Trusts.

A certificate under the common seal of the company, specifying any share or shares or stock held by any member, is *prima facie* evidence of such member's title (*k*). Certificate—evidence of membership.

To protect shareholders against deception by insuring them full information as to all the material circumstances attending the formation of the company, antecedently to the issuing of the prospectus, there is in the Companies Prospectus—contracts prior to issue of.

(*e*) 25 & 26 Vict. c. 89, s. 34.

(*f*) S. 28. See s. 29.

(*g*) 30 & 31 Vict. c. 131, s. 27.

(*h*) S. 28. As to the effect of a share warrant on membership, see ss. 29—32.

(*i*) 25 & 26 Vict. c. 89, s. 30. See

Société Générale de Paris v. Tramways Union Co., L. R. 11 Ap. Ca. 20 ; *Bradford Banking Co. v. Briggs*, 12 Ap. Ca. 29.

(*k*) 25 & 26 Vict. c. 89, s. 31. See Table A (2).

Chap. VIII. Act, 1867 (*l*), a provision requiring every prospectus of a company to specify the dates and names of parties to any contract made prior to the issue of such prospectus; its comprehensiveness has given rise to many questions (*m*): it is in the following terms:—

S. 38. "Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint-stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract."

The object of the enactment was thus eloquently expounded by Cockburn, C.J. (*n*):—

"There are cases in which, in the absence of active fraud, passive misrepresentation, that is to say, silence as to some fact which it would be material to the one party to know, but which the other is not legally bound to communicate, may involve the one in loss, but in which the party suffering what amounts to a moral, but not a legal, wrong, has no remedy at law. In the ordinary transactions of life, an individual can make inquiries and require positive information, or insist on a warranty, before entering into a contract or embarking in a common enterprise. But in these vast undertakings, carried on by the united enterprise and capital of hundreds, perhaps thousands, of shareholders, the individual shareholder is more or less at the mercy of those who invite him to join the company, as to the facts on which he may be led to

(*l*) 30 & 31 Vict. c. 131, s. 38.

(*n*) *Twyecross v. Grant*, L. R. 2 C. P.

(*m*) See Buckley's Companies Acts, D. 532.

504 *et seq.*

invest his money. Experience has shown that shareholders may be plundered, not only by being led to invest in bubble companies, but also where the undertaking is intended to be carried out (as was, I have no doubt, the case in the present instance) by the resources of the company being impoverished by clandestine agreements, from which failure of the enterprise results, or by the company being made to pay largely in excess of the value of what it gets by the cupidity of those who set it going, and that shareholders may be victimised by being made to pay more than the real value of their shares, owing to dishonest or improvident bargains made in the inception of the undertaking, and not disclosed in the prospectus. It was, I must assume, to protect the shareholder against these things, and to insure him all the information necessary to judge of the merits of the undertaking, that the enactment in question was passed, which requires, as I read it, that he shall be informed of all contracts entered into in the inception and formation of the company prior to the invitation to the public to join it by taking shares. It was for this reason, I presume, that contracts entered into by promoters, who are the parties by whom companies are usually formed and set going, are expressly included.” Chap. VIII.

For the purpose of putting an end to a company, it may be wound up either by the Court (o), or voluntarily, or subject to the supervision of the Court. Winding-up.

A company may be wound up by the Court under the following circumstances (p) :— By the Court.

S. 79 (1). “Whenever the company has passed a special resolution requiring the company to be wound up by the Court :

(2.) “Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year :

(o) 25 & 26 Vict. c. 89, s. 81.

Companies Act, 1872 (35 & 36 Vict.

(p) S. 79. See Life Assurance c. 41), s. 4.

Chap. VIII.

(3.) "Whenever the members are reduced in number to less than seven :

(4.) "Whenever the company is unable to pay its debts :

(5.) "Whenever the Court is of opinion that it is just and equitable that the company should be wound up."

Voluntary
winding-up.

A company may be wound up voluntarily under the following circumstances (q) :—

S. 129 (1). "Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily :

(2.) "Whenever the company has passed a special resolution requiring the company to be wound up voluntarily :

(3.) "Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same."

Subject to
supervision
of Court.

When a resolution has been passed by a company to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue subject to the supervision of the Court (r).

Unregistered
company.

An unregistered company may not be wound up voluntarily or under the supervision of the Court, but only by the Court (s).

County Court,

When the High Court makes an order for winding up a company, it may direct all subsequent proceedings to be had

(q) 25 & 26 Vict. c. 89, s. 129.

(r) S. 147.

(s) S. 199.

in a County Court (*t*). Such is also the Court by, or Chap. VIII
 subject to the supervision of which, Building Societies (*u*),
 and Industrial and Provident Societies are wound up (*x*).
 The latter societies are for carrying on any labour, trade or
 handicraft, whether wholesale or retail, including the buy-
 ing and selling of land, but as to banking subject to pre-
 scribed conditions, of which societies no member other than
 a society registered under the Industrial and Provident
 Societies Act, 1876, shall have or claim an interest in the
 funds exceeding £200 (*y*).

(*t*) 30 & 31 Vict. c. 131, ss. 41—46.
 And see 25 & 26 Vict. c. 89, s. 81.

Vict. c. 63; and 47 & 48 Vict. c. 41).

(*x*) 39 & 40 Vict. c. 45, s. 17.

(*u*) 37 & 38 Vict. c. 42, ss. 4, 32.
 This Act was amended in 1875, 1877,
 and 1884 (38 & 39 Vict. c. 9; 40 & 41

(*y*) 39 & 40 Vict. c. 45, s. 6 (*sic*).
 See also the Friendly Societies Act,
 1875 (38 & 39 Vict. c. 60).

Chap. IX.

CHAPTER IX.

CHOSES IN ACTION (*continued*).

I. Patents.

'PATENTS' are another kind of incorporeal property, granted by the Crown to the authors of new inventions, securing to them the profit of the same for a limited period. The grants are contained in Charters or Letters Patent, that is, open letters, *literæ patentēs*, so-called, says Blackstone (*a*); because "they are not sealed up, but exposed to open view, with the great seal pendent at the bottom, and are usually directed or addressed by the king to all his subjects at large."

21 Jac. I.
c. 3.

The right to grant such monopolies was preserved to the Crown by the Statute of Monopolies (*b*), whereby all monopolies, or licences, or privileges, allowed by the king for the sole buying and selling, making, working, or using of anything whatsoever, were rendered void, except as stated in the following saving clause:—

S. 6. "Be it declared and enacted that any declaration before mentioned shall not extend to any letters patent and grants of privilege, for the term of fourteen years or under, hereafter to be made, of the sole working or making of any manner of new manufactures within this realm, to the true and first inventor or inventors of such manufactures, which others, at the time of making such letters patent and grants, shall not use: so as also they be not contrary to the law, nor mischievous to the State by raising prices of commodities at home, or hurt of trade, or generally inconvenient; the said fourteen years

(*a*) Vol. ii. 346. For present form, see 46 & 47 Vict. c. 57, Sched. I.

(*b*) 21 Jac. I. c. 3, s. 6.

to be accounted from the date of the first letters patent or grant of such privilege hereafter to be made; but that the same shall be of such force as they should be if this Act had never been made, and of none other.”

The principle upon which the exception was permitted has been thus expressed by Professor Bell (*c*):—

“The right to a patent monopoly of a useful invention is granted on the principle of a compromise or bargain between the inventor and the public. If left to the common law, the inventor would be deprived of the benefit of his invention. If he held a monopoly of it for ever, the public interest would suffer by high prices imposed by him wherever the use of his invention was valuable, and so would be deprived of the advantage of the discovery by other persons. On these grounds the bargain proceeds, by which there is given to the public the full benefit of the discovery, on a fair disclosure of it in its most beneficial shape, and in terms so plain and intelligible that it may be used without danger of useless expense, and without the necessity of further experiment; and the public, on the other hand, is restrained for a time from interfering with the gains.”

The grant and protection of a patent are now regulated by the Patents, Designs, and Trade Marks Act, 1883 (*d*), which was passed to amend and consolidate the law relating to patents for inventions, and the registration of designs and of trade marks, by the general rules of the Board of Trade thereunder (*e*), and by the amending Acts of 1885 and 1886 (*f*). These Acts, subject to certain special provisions, apply also to Scotland and Ireland (*g*), and to the Isle of Man (*h*).

46 & 47 Vict.
c. 57.

(*c*) Bell's Principles, § 1349.

(*f*) 48 & 49 Vict. c. 63; 49 & 50

(*d*) 46 & 47 Vict. c. 57. Reference should be made to the treatise of Mr. Aston on this Act.

Vict. c. 37.

(*g*) 46 & 47 Vict. c. 57, ss. 107—111.

(*e*) 46 & 47 Vict. c. 57, s. 101.

(*h*) S. 112.

Chap. IX.

In the above Acts, 'patent' means letters patent for an invention, 'patentee' the person for the time being entitled to the patent, and 'invention' any manner of new manufacture the subject of letters patent and grant of privilege, within the above exception to the Statute of Monopolies, and includes an alleged invention (*h*).

The Acts are not to take away, abridge, or prejudicially affect, the prerogative of the Crown in relation to the granting of Letters Patent or withholding a grant (*i*).

Who may
apply for
patent.

Any person (which includes a body corporate (*k*)), whether a British subject or not, may apply for a patent (*l*); and two or more persons may apply and a patent be granted to them jointly, although some or one only be the true inventors or inventor (*m*). Formerly they must have been joint inventors. There is no implied contract that no one of the co-patentees shall use the invention without the consent of the others, or, if he does, that he shall use it for their joint benefit (*n*).

Application—
true and first
inventor.

The application must be in the prescribed form, and must be left at or sent by post to the Patent Office (*o*). It must contain a declaration (statutory or otherwise as may be prescribed) to the effect that the applicant, or in a joint application one or more of the applicants, claims or claim to be the true and first inventor or inventors (*p*). The Act does not attempt to define who is 'the true and first inventor'; to ascertain the meaning of the expression, recourse must still be had to the numerous decisions upon

(*h*) 46 & 47 Vict. c. 57, s. 46.

(*i*) S. 116.

(*k*) S. 117.

(*l*) S. 4 (1).

(*m*) S. 4 (2); and 48 & 49 Vict. c. 63, s. 5.

(*n*) *Mathers v. Green*, L. R. 1 Ch.

Ap. 29; Goodeve's Patent Cases, 298. See *Hancock v. Bewley*, *ib.* 219; Johns. 601.

(*o*) 46 & 47 Vict. c. 57, ss. 5 (1), 82 (1). For form, see 1st Sched.

(*p*) Ss. 5 (2), 99; 48 & 49 Vict. c. 63, s. 2.

the Statute of Monopolies (*q*). A person, who in a popular sense was not the true or first inventor, may yet be 'the true and first inventor' in a legal sense; for instance, he may have been the first to have imported some one else's invention from abroad, or he may have been the first to make known an invention which others had also discovered but had not made known to the public. Said Sir G. Jessel, M.R. (*r*):—

"It is not for a Judge of the present day to give his meaning as to what should be attributed to the words of the statute. He must take the construction put on the statute to be of the same effect, as guiding him to a correct decision, as if that construction had been enacted as part of the statute.

"In order that those who may have to consider my judgment hereafter may know the view that I take of the statute combined with decisions, I will state the result at which I have arrived. As I understand, shortly after the passing of the statute, the question arose whether a man could be called a first and true inventor who, in the popular sense, had never invented anything, but who, having learned abroad (that is, out of the realm, in a foreign country, because it has been decided that Scotland is within the realm for this purpose) that somebody else had invented something, quietly copied the invention, and brought it over to this country, and then took out a patent. As I said before, in the popular sense he had invented nothing. But it was decided, and now, therefore, is the legal sense and meaning of the statute, that he was a first and true inventor within the statute, if the invention, being in other respects novel and useful, was not previously known in this country—'known' being used in that particular sense, as being part of what had been called the common or public knowledge of the country. That was the first thing. Then there was a second thing. Suppose there were two people, actual inventors in this country, who invented the same thing simultaneously, could either be said to be the first and true

(*q*) See 46 & 47 Vict. c. 57, s. 46 :
ante, p. 180.

(*r*) *Plimpton v. Malcolmson*, L. R.
3 Ch. D. 555.

Chap. IX. inventor? It was decided that the man who first took out the patent was the first and true inventor. Then there was another point. If the man who took out the patent was not, in popular language, the first and true inventor, because somebody had invented it before, but had not taken out a patent for it, would he still, in law, be the first and true inventor? It was decided he would, provided the invention of the first inventor had been kept secret, or, without being actually kept secret, had not been made known in such a way as to become a part of the common knowledge, or of the public stock of information. Therefore, in that case also, there was a person who was legally the first and true inventor, although, in common language, he was not, because one or more people had invented it before him, but had not sufficiently disclosed it."

Subject-matter.

Otherwise the invention must be novel, as well as useful, both matter of actual discovery and of useful discovery; it may be of an improvement on, or addition to, an existing patent, or a new application of known principles. A new process including distinct means to the same known end is good subject-matter of a patent, and so is a new combination of old things, but not a mere principle or idea alone, or the new use of an old thing (s).

Exhibitions.

The exhibition of an invention at an Industrial or International Exhibition, certified as such by the Board of Trade, or the publication of any description of it during the Exhibition, or the use of it for the purpose of the Exhibition and in the place of the Exhibition, or the use of it during the Exhibition by any person elsewhere without the privity or consent of the inventor, is not to prejudice the rights of the

(s) See Goodeve's Patent Cases, Index, titles 'subject-matter' (and *Badische Anilin und Soda Fabrik v. Levinstein*, *ib.* 24; L. R. 24 Ch. D. 156), 'novelty of invention,' and 'user.' As to prior publication, see *Otto v. Steel*, L. R. 31 Ch. D. 241; and *Harris v. Rothwell*, W. N. (1886); 166.

Chap. IX.

inventor ; provided that before exhibiting he gives the Comptroller notice of his intention to do so, and the application is made within six months from the date of opening (*t*). This protection may be extended by Her Majesty by Order in Council to any Exhibition to be mentioned in the Order ; which may also provide that the exhibitor shall be relieved from the condition as to notice, absolutely or upon terms (*u*).

An application for a patent must be accompanied by a 'specification,' which may be either 'provisional' or 'complete' (*x*). A provisional specification must describe the nature of the invention, and be accompanied by drawings if required (*y*) ; a complete specification must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required, or refer to those which accompanied the provisional specification (*z*). Every specification must commence with the title of the invention, and a complete specification must end with a complete statement of it (*a*). The complete specification, if not left with the application, may be left at any time within nine months or, with leave, within a further period of one month (*b*), from the date of application ; and unless it is left within that time, the application is deemed to be abandoned (*c*). Formerly the specification was completed subsequently to the grant of the patent. It has been provided that, when an application has been abandoned, no specification or

Provisional
specification.

(*t*) 46 & 47 Vict. c. 57, s. 39.

(*u*) 49 & 50 Vict. c. 37, s. 3.

(*x*) 46 & 47 Vict. c. 57, s. 5 (2).

(*y*) S. 5 (3). For form, see 1st Sched.

(*z*) S. 5 (4) ; 49 & 50 Vict. c. 37,

s. 2. For form, see 1st Sched. to 46 & 47 Vict. c. 57.

(*a*) 46 & 47 Vict. c. 57, s. 5 (5).

(*b*) 48 & 49 Vict. c. 63, s. 3.

(*c*) 46 & 47 Vict. c. 57, s. 8.

Chap. IX.

drawings shall be open to public inspection or be published by the Comptroller (*d*).

Comptroller—
examiner—
law officer.

The Comptroller is the officer under whose immediate control the Patent Office is placed, and who acts under the superintendence and direction of the Board of Trade, by whom he is appointed (*e*). He is to refer every application to an Examiner, who is also an officer appointed by the Board of Trade (*f*), whose duty it is to ascertain and report to the Comptroller whether the nature of the invention has been fairly described, whether the application, specification, and drawings (if any) have been prepared as prescribed, and whether the title sufficiently indicates the subject-matter (*g*); upon the report of the Examiner the Comptroller may, after opportunity to the applicant of being heard (*h*), require the application, specification, or drawings to be amended, subject to an appeal to the law officer (*i*), that is, the Attorney or Solicitor-General (*k*).

Complete
specification.

Similarly where a complete specification is left, after a provisional one, the Comptroller is to refer it to an Examiner that he may ascertain whether it has been prepared as prescribed, and whether the invention particularly described in the complete specification is substantially the same as that described in the provisional specification; upon the report of the Examiner the Comptroller may, after opportunity to the applicant of being heard (*l*), refuse to accept the complete specification unless amended, subject to an appeal to the law officer (*m*). Unless a complete specification is accepted within twelve months (or, with leave, within

(*d*) 48 & 49 Vict. c. 63, s. 5.

(*e*) 46 & 47 Vict. c. 57, ss. 82, 83.

(*f*) S. 83.

(*g*) S. 6.

(*h*) S. 94.

(*i*) S. 7 (1), (2), (3).

(*k*) S. 117.

(*l*) S. 94.

(*m*) S. 9 (1), (2), (3).

a further period of three months (*n*) from the date of application, then (unless an appeal have been lodged) the application becomes void at the expiration of the twelve months (*o*), or of the extended time (*p*). As in the case of an abandoned application (*q*), so in the case of one becoming void no specification or drawings shall be open to public inspection or be published by the Comptroller (*r*). In no case are the reports of Examiners to be published or open to public inspection (*s*). But on the acceptance of the complete specification the Comptroller is to advertise the acceptance, and the application and specification or specifications with the drawings (if any) are to be open to inspection (*t*); and provision is made for the issue of an official journal by the Comptroller (*u*), and for a patent museum (*x*).

If, after an application has been made but before a patent has been sealed, another application is made with a specification bearing the same or a similar title, it is the duty of the Examiner to report to the Comptroller whether the specification appears to comprise the same invention; if he reports in the affirmative, after notice to the applicants, the Comptroller may determine, subject to appeal to the law officer, whether the invention is the same, and, if so, refuse the application of the second applicant (*y*). It is also provided that in case of more than one application for a patent for the same invention, the sealing of a patent on one application shall not prevent the sealing of a patent on an earlier application (*z*).

Applications
in respect
of same
invention.

(*n*) 48 & 49 Vict. c. 63, s. 3.
 (*o*) 46 & 47 Vict. c. 57, s. 9 (4).
 (*p*) 48 & 49 Vict. c. 63, s. 3.
 (*q*) *Ante*, p. 185.
 (*r*) 48 & 49 Vict. c. 63, s. 4.
 (*s*) 46 & 47 Vict. c. 57, s. 9 (5).

(*t*) S. 10.
 (*u*) S. 40.
 (*x*) S. 41.
 (*y*) S. 7 (5), (6).
 (*z*) S. 13.

Chap. IX.

Amendment
of specifica-
tion.

The Comptroller, subject to an appeal to the law officer, may permit an amendment from time to time in a specification (including the drawings) by way of disclaimer, correction, or explanation, by an applicant or a patentee, provided that he do not thereby claim an invention substantially larger or different, and that no action for infringement or other legal proceeding in relation to a patent is pending (*a*). In an action for infringement, or proceeding for revocation, the patentee may, with the leave of the High Court or a Judge thereof, amend by way of disclaimer, and in such case the hearing of the action will in the meantime be postponed (*b*). In case of amendment no damages will be recoverable in respect of user prior thereto, unless the patentee establishes that his original claim was framed in good faith and with reasonable skill and knowledge (*c*).

Opposition
to grant.

Any person may, within two months from the date of advertisement of the acceptance of a complete specification, give notice of opposition to the grant of a patent on the following grounds only,—(1) that the applicant has obtained the invention from him, or from a person of whom he is the legal representative; or, (2), that the invention has been patented on an application of prior date; or, (3), that the Examiner has reported that the specification appears to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application (*d*). After the two months the Comptroller is to decide on the case subject to an appeal

(*a*) 46 & 47 Vict. c. 57, ss. 18, 21. An appeal pending to the House of Lords is not an action, &c., pending. 'Pending action' is an action before judgment: 'other legal proceeding' is a proceeding for revocation: *Crompton v. Smith*, L. R. 28 Ch. D. 148.

(*b*) 46 & 47 Vict. c. 57, ss. 19, 21. See *Fusee Vesta Co. v. Bryant & May*, L. R. 34 Ch. D. 458; *Bray v. Gardner*, *ib.* 668.

(*c*) 46 & 47 Vict. c. 57, s. 20.

(*d*) S. 11 (1).

to the law officer, who may call in the assistance of an expert (e). Chap. IX.

If there is no opposition, or in case of opposition if the determination is in favour of the grant, the Comptroller is to cause a patent to be sealed with the seal of the Patent Office (f). Grant of patent.

The patent must be for one invention only, but may contain more than one claim; but no objection may be taken in any action or proceeding on the ground that the patent comprises more than one invention (g). The patent is to be sealed as soon as may be, and not after fifteen months from the date of application, unless the time for leaving a complete specification has been extended, in which case a further period of four months is allowed (h), except in the following cases:—(1) where the sealing is delayed by an appeal to the law officer, or by opposition to the grant, then it may be sealed at such time as the law officer may direct; and (2) if the applicant dies before the expiration of the fifteen months, the patent may be granted to his legal representative and sealed at any time within twelve months after his death (i). Now, also, in the case of the death of an inventor, the application for a patent may be made by his legal representative, provided that it is made within six months of his decease (k).

Every patent is to be dated and sealed as of the day of the application; but no proceedings can be taken in respect of an infringement before the publication of the complete specification (l).

(e) 46 & 47 Vict. c. 57, s. 11 (2), (3),

(4).

(f) Ss. 12 (1), (2), 84.

(g) S. 33. See form of patent in 1st Sched.

(h) 48 & 49 Vict. c. 63, s. 3.

(i) 46 & 47 Vict. c. 57, s. 12 (3).

(k) S. 34.

(l) S. 13.

Chap. IX.

Protection—
provisional—
by complete
specification.

Where an application has been accepted, the invention may between the date of application and of sealing be used and published without prejudice to the patent to be granted; such protection from the consequence of use and publication is called 'provisional protection' (*m*).

After the acceptance of a complete specification until the date of sealing the patent or expiration of time for sealing, the applicant has the like privileges and rights as if a patent had been sealed on the date of acceptance; only he cannot institute proceedings for infringement until a patent has been granted to him (*n*).

Refusal to
grant patent.

The Comptroller may refuse to grant a patent of which the use would in his opinion be contrary to law or morality (*o*).

Loss or
destruction
of patent.

If a patent is lost or destroyed, or its non-production is accounted for to his satisfaction, the Comptroller may at any time cause a duplicate to be sealed (*p*).

Extent and
duration of
patent.

The patent when sealed has effect throughout the United Kingdom and the Isle of Man (*q*). The term limited in the patent for its duration is fourteen years from its date; but the patent will cease on failure by the patentee to make the prescribed payments within the prescribed times, unless the time has been enlarged by the Comptroller, when satisfied that the failure to pay was attributable to accident, mistake, or inadvertence (*r*). On the other hand the term may be extended on petition to Her Majesty in Council, which must be presented at least six months before the time limited for the expiration of the patent, for a further term not exceeding seven, or, in exceptional cases, fourteen,

(*m*) 46 & 47 Vict. c. 57, s. 14.

(*n*) S. 15.

(*o*) Ss. 86, 94, 95.

(*p*) S. 37.

(*q*) S. 16.

(*r*) Ss. 17, 24.

years, if the Judicial Committee, having regard to the Chap. IX. nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to the circumstances of the case, report that the patentee has been inadequately remunerated by his patent; or a new patent may be granted for the term therein mentioned and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit (s).

All patents granted after the 31st of December, 1883 (t), have the like effect against Her Majesty and her heirs and successors as against a subject; but the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, use the invention on terms to be before or after the use agreed on, with the approval of the Treasury, between them and the patentee, or in default of such agreement on such terms as may be settled by the Treasury (u). Also provision is made for the assignment by the inventor of any improvement in instruments or munitions of war to Her Majesty's Principal Secretary of State for the War Department (for or without valuable consideration) of all the benefit of the invention, and of any patent obtained or to be obtained for the same, and for keeping the particulars of such invention and the manner in which it is to be performed secret (x). Crown and officers of the crown.

A patent is not to prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of Her Majesty's Courts in the United Kingdom or the Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, if not used for or in connec- Foreign vessels.

(s) 46 & 47 Vict. c. 57, s. 25. See
In re Newton's Patents, L. R. 9 Ap. Ca.
592.

(t) 46 & 47 Vict. c. 57, ss. 3, 45 (2).
(u) S. 27.
(x) S. 44.

Chap. IX.Compulsory
licenses.

tion with the manufacture or preparation of anything to be sold in or exported from the United Kingdom or Isle of Man; provided that a similar indulgence is accorded by the foreign state to the use of inventions in British vessels while in the waters within the jurisdiction of such state (y).

A patentee (where the patent has been granted since the 31st of December, 1883 (z)) may be ordered by the Board of Trade to grant licenses for the use of his invention on such terms as to royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, when it is proved that:—

S. 22 (a.) “The patent is not being worked in the United Kingdom; or

(b.) “The reasonable requirements of the public with respect to the invention cannot be supplied; or

(c.) “Any person is prevented from working or using to the best advantage an invention of which he is possessed” (a).

Revocation.

The old complicated proceeding to repeal a patent by *scire facias* is abolished, and in place thereof revocation of a patent may be obtained on petition to the High Court; but every ground on which a patent might be repealed by *scire facias* is still available by way of defence to an action of infringement and is also a ground of revocation (b). A petition of revocation may be presented (c) by the Attorney-General or any person authorised by him or by

(c.) “Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims:

(y) 46 & 47 Vict. c. 57, s. 43.

(z) Ss. 3, 45 (2).

(a) S. 22.

(b) Ss. 26 (1), (2), (3), 117.

(c) S. 26 (4).

(*d.*) “Any person alleging that he or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee : Chap. IX.

(*e.*) “Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention.”

When a patent has been revoked on the ground of fraud, upon an application by the true inventor, a patent may be granted to him in lieu of, and bearing the same date as the date of revocation of, the revoked patent ; but it will cease on the expiration of the term for which the revoked patent was granted (*d.*). Similarly a patent granted to the true and first inventor will not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication during such protection (*e.*).

A patentee may assign his patent for any place in or part of the United Kingdom or Isle of Man, as if it had been granted to extend to that place or part only (*f.*). This does not limit his power of assignment absolutely (*g.*). Assignment.

In the Register of Patents at the Patent Office are to be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licenses, of amendments, extensions, and revocations, and such other matters affecting the validity or proprietorship as may from time to time be prescribed, and the register will be *prima facie* evidence (*h.*). Also copies of deeds, licenses, and any other documents affecting proprietorship, must be supplied to the Comptroller Registers.

(*d.*) 46 & 47 Vict. c. 57, s. 26 (8).

(*f.*) S. 36.

(*e.*) S. 35. Further as to fraud, see s. 18 (9).

(*g.*) See form, 2 Da. i. 629.

(*h.*) 46 & 47 Vict. c. 57, s. 23 (1), (2).

Chap. IX.

for filing in the Patent Office (*i*). The person for the time being entered as proprietor has, subject to any rights appearing from the register to be vested in any other person, power absolutely to assign, grant licenses as to, or otherwise deal with, the patent, and give effectual receipts for any consideration; provided that any equities may be enforced as in respect of any other personal property (*k*): but there must not be entered in the register or received by the Comptroller notice of any trust (*l*). The register is to be open to inspection, and certified copies of any entry may be obtained (*m*). Certified copies or extracts of or from patents and other documents in the Patent Office, and of or from registers and other books kept therein, are to be received in evidence without further proof or production of the originals (*n*). The High Court may, on the application of any person aggrieved, order the register to be rectified (*o*), and the Comptroller may correct a clerical error (*p*).

Threats of
proceedings
by patentee.

Formerly a patentee who issued notices against the sale or purchase of certain articles, alleging infringements of his patent and threatening proceedings, was not liable to an action for damages by the vendor or for an injunction, if he acted *bonâ fide*; on the ground that an action for slander of title would not lie unless the statements were not only untrue, but were made without reasonable and probable cause, that is *malâ fide* (*q*). But now the Act of 1883 (*r*) provides that:—

(*i*) 46 & 47 Vict. c. 57, s. 23 (3).

(*k*) S. 87.

(*l*) S. 85.

(*m*) S. 88.

(*n*) S. 89.

(*o*) Ss. 90, 117.

(*p*) S. 91.

(*q*) *Halsey v. Brotherhood*, L. R. 19 Ch. D. 386. See *per* Baggallay, L.J., 389.

(*r*) 46 & 47 Vict. c. 57, s. 32. See *Kurtz v. Spence*, L. R. 33 Ch. D. 579.

S. 32. "Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats. Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent." Chap. IX.

It must be proved by the person aggrieved, as a condition precedent to obtaining an injunction, that there has not in fact been any infringement of the claimant's rights(s). Such person may obtain an injunction although the threats were contained only in a letter to him (t).

On the other hand any person representing that any article sold by him is a patented article, when no patent has been granted for it, is made liable for every offence on summary conviction to a fine not exceeding 5*l.* (u). False-
ly
represent-
ing
articles to be
patented.

In 1787 an Act (x) was first passed for the encourage- II. Designs.
ment of the arts of designing and printing linens, cottons, calicoes, and muslins, by granting the sole right to use any new and original pattern for printing the same during the period of three months. The period of protection was subsequently extended (y); and also the principle of the

(s) *Barney v. United Telephone Co.*, D. 638.
L. R. 28 Ch. D. 394.

(u) 46 & 47 Vict. c. 57, s. 105.

(t) *Driffield & East Riding Pure Linseed Cake Co. v. Waterloo Mills Cake & Warehousing Co.*, L. R. 31 Ch.

(x) 27 Geo. III. c. 38.

(y) 29 Geo. III. c. 19; 34 Geo. III. c. 23; and 2 Vict. c. 13.

Chap. IX. Act was extended to secure to proprietors of designs for certain articles of manufacture the copyright of such designs for a limited time (*z*). In 1842 a consolidating and amending Act was passed for the protection of the copyright of designs for ornamenting articles of manufacture whereby the prior Acts were repealed (*a*). This Act with the subsequent amending Acts, was repealed by the Patents, Designs and Trade Marks Act, 1883 (*b*), by which, by the General Rules of the Board of Trade thereunder (*c*), and by the Amending Acts of 1885, 1886 (*d*), the protection to the proprietor of any new *or* original design is now regulated.

46 & 47 Vict.
c. 57.

Design—
copyright in—
proprietor of.

For the purposes of the Act 'design,' which it will be observed is not confined to purposes of ornament, and 'copyright' therein are thus defined (*e*) :—

S. 60. " 'Design' means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape, or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

" 'Copyright' means the exclusive right to apply a design to any article of manufacture or to any such substance as

(*z*) 2 Vict. c. 17.

(*a*) 5 & 6 Vict. c. 100, s. 1.

(*b*) 46 & 47 Vict. c. 57, s. 113.

(*c*) S. 101.

(*d*) 48 & 49 Vict. c. 63; 49 & 50 Vict. c. 37.

(*e*) 46 & 47 Vict. c. 57, s. 60.

aforesaid in the class or classes in which the design is registered.” Chap. IX.

Also ‘proprietor’ is defined as follows (*f*):—

S. 61. “The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.”

On application by or on behalf of any person (which Registration. includes a body corporate) claiming to be the proprietor of any new or original design not previously published in the United Kingdom, which must be in the prescribed form and be left at or sent by post to the Patent Office, the Comptroller may register the design (*g*). The application must contain a statement of the nature of the design, and the class or classes of goods in which it is desired that it should be registered (*h*), and be accompanied with the prescribed number of copies of drawings, photographs, or tracings, sufficient to identify the design, or with exact representations or specimens of the designs; the Comptroller may refuse any drawing, photograph, tracing, representation, or

(*f*) 46 & 47 Vict. c. 57, s. 61.

see *Le May v. Welch*, L. R. 28 Ch. D. 24.

(*g*) Ss. 47 (1), (2), 117. For form, see 1st Schedule: for example of design refused as not new or original,

(*h*) 46 & 47 Vict. c. 57, s. 47 (3).

Chap. IX. specimen, which is not in his opinion suitable for the official records (*i*). The design may be registered in more than one class; and, in case of doubt as to the class in which it ought to be registered, the Comptroller may decide the question; also he may, if he thinks fit, refuse to register any design, subject to appeal to the Board of Trade (*k*). When registered the Comptroller is to grant a certificate of registration to the proprietor, and in case of loss of the original, or in any other case in which he deems it expedient, he may grant a copy or copies of the certificate (*l*).

Exhibitions. The exhibition of a design or any article to which it is applied at an Industrial or International Exhibition certified by the Board of Trade, or the exhibition elsewhere during the Exhibition, without the privity or consent of the proprietor, or the publication of a description of a design during any such Exhibition will not prevent the design from being registered, or invalidate the registration; provided that beforehand the exhibitor give the Comptroller notice of his intention, and the application is made within six months from the date of opening (*m*). This protection may be extended by Her Majesty by Order in Council to any Exhibition to be mentioned in the Order, which may also provide that the exhibitor shall be relieved from the condition as to notice, absolutely or upon terms (*n*).

Duration of
copyright.

In place of the periods of protection varying, as formerly, according to the class of goods, the copyright in a registered design now extends in all cases to one period of five years from the date of registration (*o*).

Before delivery on sale of any articles to which a regis-

(*i*) 46 & 47 Vict. c. 57, s. 48 (2).

(*k*) S. 47 (4), (5), (6), (7). Sec
s. 86.

(*l*) S. 49.

(*m*) S. 57.

(*n*) 49 & 50 Vict. c. 37, s. 3.

(*o*) 46 & 47 Vict. c. 57, s. 50 (1).

tered design has been applied, if exact representations or specimens were not furnished on application, the proprietor must then furnish them, or the Comptroller may erase his name from the register, and his copyright will cease (*p*). Also before delivery on sale the proprietor must cause each article to be marked with the prescribed mark, word or words, or figures, denoting that the design is registered, or his copyright will cease; unless he shows that he took all proper steps to ensure the marking of the article (*q*).

The copyright will also cease if the design is used in manufacture in any foreign country, and not in this country, within six months of its registration (*r*). This provision is new, and it will be observed that it is not confined to use abroad by the proprietor.

In the Register of Designs at the Patent Office are to be entered the names and addresses of proprietors of registered designs, notifications of assignments, and of transmissions of registered designs, and such other matters as may from time to time be prescribed; and the register will be *prima facie* evidence (*s*). The person for the time being entered as proprietor has, subject to any rights appearing from the register to be vested in any other person, power absolutely to assign, grant licences as to, or otherwise deal with, the copyright, and give effectual receipts for any consideration; provided that any equities may be enforced as in respect of any other personal property (*t*); but there must not be entered on the register or received by the Comptroller notice of any trust (*u*). Registers.

During the existence of copyright, the design is not open

(*p*) 46 & 47 Vict. c. 57, s. 50 (2).

(*q*) S. 51. For instance of the exception, see *Wittman v. Oppenheim*, L. R. 27 Ch. D. 260.

(*r*) 46 & 47 Vict. c. 57, s. 54.

(*s*) S. 55.

(*t*) S. 87.

(*u*) S. 85.

Chap. IX.

to inspection, except by the proprietor, or a person authorised in writing by him or a person authorised by the Comptroller or by the Court, and furnishing such information as may enable the Comptroller to identify the design, nor except in the presence of the Comptroller or his officer, and on payment of the prescribed fee; and the person making the inspection may not take a copy of the design or any part of it (*x*). When, however, the copyright has ceased, the design is to be open to inspection, and copies may be taken by any person on payment of the prescribed fee (*y*), or certified copies obtained (*z*). Certified and sealed copies or extracts of or from the register are to be received in evidence without further proof or production of the originals (*a*). The Court may, on the application of any person aggrieved, order the register to be rectified (*b*), and the Comptroller may correct a clerical error (*c*).

Piracy—false
representation.

On the request of any person producing a particular design, with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the Comptroller to identify the design, and on payment of the fee, the Comptroller is to inform him whether the registration still exists, and in respect of what class or classes of goods, and the date of registration, and the name and address of the proprietor (*d*).

For the protection of the proprietor of a design against piracy thereof it has been enacted that (*e*):—

S. 58. “During the existence of copyright in any design—

(*a.*) “It shall not be lawful for any person without the license or written consent of the registered proprietor to

(*x*) 46 & 47 Vict. c. 57, s. 52 (1).

(*y*) Ss. 52 (2), 56.

(*z*) S. 88.

(*a*) S. 89.

(*b*) S. 90.

(*c*) S. 91.

(*d*) S. 53.

(*e*) S. 58.

apply such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural, or partly artificial and partly natural; and Chap. IX.

(b.) "It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor."

And an offender is made liable for every offence to forfeit by way of penalty a sum not exceeding 50*l.* to the proprietor, who may recover it as a simple contract debt (*f*); or, if he elects to do so, the proprietor may bring an action for the recovery of damages (*g*).

Also any person who describes any design applied to any article sold by him as registered, which is not, is made liable for every offence on summary conviction to a fine not exceeding 5*l.* (*h*).

Particular traders have long been in the habit of using some particular mark or stamp to indicate that the article to which it was affixed had been manufactured by them. It was settled law that there was no property whatever in a trade-mark; but a person who had been in the habit of using a particular mark might, by proceedings in the Courts of law or of equity, prevent other persons from fraudulently taking advantage of the reputation which his goods had acquired by using his mark in order to pass off their goods as his to his injury (*i*). But in 1875 an Act was passed to

III. Trade
marks.

(*f*) 46 & 47 Vict. c. 57, s. 58.

(*g*) S. 59.

(*h*) S. 105.

(*i*) *The Collins Co. v. Brown*, 3 K. & J. 423.

Chap. 1X.46 & 47 Vict.
c. 57.

establish a register of trade-marks, under which a person could be registered as the first proprietor of a trade-mark (*k*). This Act, with the subsequent amending Acts, was repealed by the Patents, Designs, and Trade Marks Act, 1883 (*l*), by which and the General Rules of the Board of Trade thereunder (*m*), and the Amending Act of 1885 (*n*), the registration of trade-marks and the protection of their proprietors are now regulated.

For the purposes of the Act a trade-mark must consist of, or contain, at least one of the following essential particulars (*o*) :—

(a.) “A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

(b.) “A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

(c.) “A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use” (*p*).

And there may be added to any one or more of such particulars any letters, words, or figures, or combination of them, or of any of them (*q*).

Registration.

An application by or on behalf of any person (which includes a body corporate (*r*)) claiming to be the proprietor of a trade-mark for particular goods or classes of goods,

(*k*) 38 & 39 Vict. c. 91.

(*l*) 46 & 47 Vict. c. 57, s. 113.

(*m*) S. 101.

(*n*) 48 & 49 Vict. c. 63.

(*o*) 46 & 47 Vict. c. 57, s. 64 (1).

(*p*) As to ‘fancy word,’ see *In re Van Duzer’s Trade Mark*, *In re Leaf, Sons, & Co.’s Trade Mark*, L. R. 34 Ch. D. 623; *In re Arbenz’s Application and Osborne & Co.’s Opposition*, W. N. (1887), 62; *Symington & Co. v. Foot-*

man & Co., W. N. (1887), 70.

(*q*) 46 & 47 Vict. c. 57, s. 64 (2). For instances of application refused, see *Price’s Patent Candle Co.*, L. R. 27 Ch. D. 681; *In re Harden Star Hand Grenade Fire Extinguisher Co.*, W. N. (1886), 84: of application granted, see *In re Trade Mark “Alpine,”* L. R. 29 Ch. D. 877; but questioned in *In re Van Duzer’s Trade Mark*, 34 Ch. D. 623.

(*r*) 46 & 47 Vict. c. 57, s. 117.

which must be in the prescribed form and left at or sent by post to the Patent Office, the Comptroller may register the trade-mark (*s*). The application must be accompanied by the prescribed number of representations of the trade-mark, and statement of the particular goods or classes of goods in connection with which the applicant desires it should be registered (*t*). The Comptroller may, if he thinks fit, refuse to register a trade-mark, subject to appeal to the Board of Trade, who may refer the appeal to the High Court (*u*). He may not register, as part of or in continuation with a trade-mark, any words the exclusive use of which would, by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a Court of Justice, or any scandalous design (*x*). Where registration is not completed within twelve months from application, by reason of default on the applicant's part, it will be deemed to be abandoned (*y*).

Every application must be advertised by the Comptroller as soon as may be after its receipt (*z*); and any person may within two months from the first advertisement give notice of opposition, of which the Comptroller is to give notice to the applicant, who must, within two months from receipt of such notice or any further time allowed, send to the Comptroller statement of the grounds on which he relies for his application, or he will be deemed to have abandoned it (*a*).

(*s*) 46 & 47 Vict. c. 57, ss. 62 (1), (2), 65. For form, see 1st Schedule.

(*t*) S. 62 (3).

(*u*) S. 62 (4), (5); and see s. 86. For instance of the Court directing registration, see *In re "White Rose" Trade Mark*, L. R. 30 Ch. D. 505. Appeal to the Board of Trade must precede application to the High

Court: *In re "Normal" Trade Mark*, W. N. (1886), 154.

(*x*) 46 & 47 Vict. c. 57, s. 73.

(*y*) S. 63.

(*z*) S. 68.

(*a*) S. 69 (1), (2). For instance of successful opposition, see *In re Heaton's Trade Mark*, L. R. 27 Ch. D. 570.

Chap. IX.

Upon the opponent giving security for costs of opposition, the case is to stand for the determination of the Court, which then has jurisdiction to go into all questions relating to the validity of the trade-mark (*b*) ; but, if security is not given within fourteen days after requirement or any further time allowed, the opposition will be deemed to be withdrawn (*c*). Where each of several persons claim registration, the Comptroller may refuse to register any of them until their rights have been determined according to law, and he may submit, or require them to submit their claims to the Court (*d*) ; but, where the applicants have so agreed, he may register each with a note of undertakings by the parties restricting the use of the mark to certain specified districts (*e*). Except where the Court has decided that two or more persons are entitled to be registered, the Comptroller must not register, in respect of the same goods or description of goods, a trade-mark identical with one already on the register ; and he must not register, in respect of the same goods or description of goods, a trade-mark so nearly resembling one already on the register as to be calculated to deceive (*f*). The question arising whether a new mark was so like another as to be calculated to deceive, Bowen, L.J., said (*g*) :—

“ It seems to me that a trade-mark is calculated, by its resemblance to another already on the register, to deceive, if in the course of its legitimate use in the trade it is likely to do

(*b*) *In re Arbenz's Application and Osborne & Co.'s Opposition*, W. N. (1887), 62.

(*c*) 46 & 47 Vict. c. 57, s. 69 (3), (4).
(*d*) S. 71.

(*e*) *In re Mitchell & Co.'s Trade Mark*; *In re Houghton & Hallmark's Trade Mark*, L. R. 28 Ch. D. 666.

(*f*) 46 & 47 Vict. c. 57, s. 72. In *In re "White Rose" Trade Mark*, L. R. 30 Ch. D. 505, the Court ordered the registration of an old mark, notwithstanding the possibility of the public being deceived.

(*g*) *In re Lyndon's Trade Mark*, L. R. 32 Ch. D. 119.

so. In considering the question whether this result is probable, Chap. IX. it seems to me that we must look at the circumstances of the case. We must consider whether blurring is likely to take place; we must consider, in the case of a stamp, whether, having regard to the special class of articles on which the impression is to be made, there is likely to be such indistinctness as is calculated to deceive. It seems to me that in many cases we may be obliged to regard the size of the article upon which the mark is intended to be made or fixed, and the material or the ground-work, so to speak, upon which it is to be placed. I think it would not be wrong to consider the probability, if an impression had to be made on a hard substance, of some letters being more likely to take with distinctness than others, or parts of the design being likely to come out with more perfection, while other parts would remain more imperfectly represented. We ought also to have regard to the effect likely to be produced in the particular article by wear and tear. All these seem to be things which a man of common sense and business habits would take into account if he were asking himself the question whether one trade-mark is so like another as to be calculated, in the probable course of its use in trade, to deceive."

When a person claims to be the proprietor of several trade-marks, they may be registered as a series in one registration, where, while resembling each other in material particulars, they differ in respect of (1) the goods for which they are used or to be used, or (2) numbers, or (3) price, or (4) quality, or (5) names of places (*h*). A series is assignable and transmissible only as a whole, but for other purposes each is to be treated as registered separately (*i*).

A trade-mark may be registered in any colour, and the registered owner will have the exclusive right to use the same in that or any other colour (*k*).

(*h*) 46 & 47 Vict. c. 57, s. 66.

(*k*) S. 67.

(*i*) *Ib.*

Chap. IX.

In addition to the trade-mark the Comptroller may enter on the register, subject to disclaimer by the applicant of any right to the exclusive use of the same, the following, namely (*l*) : —

“Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made.”

Registration of a trade-mark is equivalent to its public use ; and registration of a person as proprietor is *prima facie* evidence, and after five years from registration conclusive evidence, of his right to its exclusive use (*m*) ; provided it has rightly been registered (*n*). A person is not entitled to institute proceedings to prevent, or to recover damages for, the infringement of a trade-mark, unless it has been registered (*o*). But it seems the assignee of a registered trade-mark may sue without having registered the assignment (*p*).

A prescribed fee must be paid by the registered proprietor on or before the expiration of every period of fourteen years from the date of registration, or, after default for three months, the trade-mark will be removed from the register, subject to the Comptroller's power to restore it on the prescribed payments being made, if he is satisfied that it is just so to do ; but where a trade-mark has been removed, it will nevertheless be deemed a trade-mark already re-

(*l*) 46 & 47 Vict. c. 57, s. 74 (1) (*a*), (2).

(*m*) Ss. 75, 76.

(*n*) *Re J. B. Palmer's Trade Mark*,
L. R. 24 Ch. D. 504 ; *In re Lloyd &
Sons' Trade Mark*, L. R. 27 Ch. D.

646 ; *In re Wragg's Trade Mark*, L. R.
29 Ch. D. 551.

(*o*) 46 & 47 Vict. c. 57, s. 77.

(*p*) *Thlee v. Henshaw*, L. R. 31 Ch.
D. 323.

gistered for the purpose of any application for registration during the five years next after the date of removal (*q*). Chap. IX.

Upon the application of the registered proprietor of a trade-mark, the High Court may grant leave to add to or alter such mark in any but an essential particular, and the register is to be altered accordingly (*r*).

A registered trade-mark may be assigned and transmitted only in connection with the good-will of the business concerned, and is determinable with that good-will (*s*). Assignment.

In the Register of Trade Marks at the Patent Office are to be entered the names and addresses of proprietors of registered trade-marks, notifications of assignments, and of transmissions of trade-marks, and such other matters as may from time to time be prescribed (*t*). The person for the time being entered as proprietor has, subject to any rights appearing from the register to be vested in any other person, power absolutely to assign, grant licenses as to, or otherwise deal with, the copyright in the trade-mark, and give effectual receipts for any consideration; provided that any equities may be enforced as in respect of any other personal property (*u*); but there must not be entered on the register or received by the Comptroller notice of any trust (*x*). The register is to be open to inspection and certified copies of any entry may be obtained (*y*). Certified and sealed copies or extracts of or from registers and other books kept in the Patent Office are to be received in evidence without further proof or production of the originals (*z*). Registers.

(*q*) 46 & 47 Vict. c. 57, ss. 79, 80.

(*r*) S. 92.

(*s*) S. 70. For instance, see *In re Wellcome's Trade Mark*, L. R. 32 Ch. D. 213. As to what is the goodwill of a business, and the effect of sale or mortgage thereon, see *Pearson v. Pearson*, L. R. 27 Ch. D. 145; and

Cooper v. Metropolitan Board of Works, L. R. 25 Ch. D. 472. And see 2 Da. i. 643, note.

(*t*) 46 & 47 Vict. c. 57, s. 78.

(*u*) S. 87.

(*x*) S. 85.

(*y*) S. 88.

(*z*) S. 89.

Chap. IX. The High Court may, on the application of any person aggrieved, order the register to be rectified (*a*); and the Comptroller may correct a clerical error (*b*), and he may also cancel the entry or part of the entry of a trade-mark upon proper application by the proprietor (*c*).

Sheffield
marks.

Special provision is made by the Patents, Designs and Trade Marks Act, 1883 (*d*), for the registration by the Cutlers' Company, in a register to be called the Sheffield Register, of trade-marks used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, on the application of any person carrying on business in Hallamshire in the County of York or within six miles thereof. After five years from the commencement of the Act, namely, after 31st December, 1888, the Company are to close the old Cutlers' Register, and all marks therein entered, unless entered in the Sheffield Register, will be deemed to have been abandoned.

IV. Inter-
national and
colonial
arrangements
for protection
of inventions,
designs, and
trade-marks.

Where an arrangement has been made by the Crown with a foreign state for mutual protection of inventions, designs, or trade-marks, and an Order in Council to such effect is in force, any person who has applied for protection for any invention, design, or trade-mark in any such state is entitled to a patent for his invention, or to registration of his design or trade-mark, under the Patents, Designs, and Trade Marks Acts, in priority to other applicants, and such patent or registration will be dated as of the date of application; only his application must be made, in the case

(*a*) 46 & 47 Vict. c. 57, s. 90; *In re Lloyd & Sons' Trade Mark*, L. R. 27 Ch. D. 646; *In re Wragg's Trade Mark*, 29 Ch. D. 551; *Anglo-Swiss Condensed Milk Co. v. Metcalf*, 31 Ch.

D. 454; *In re "Normal" Trade Mark*, W. N. (1887), 50.

(*b*) 46 & 47 Vict. c. 57, s. 91 (*a*), (*b*).

(*c*) S. 91 (*c*).

(*d*) S. 81.

of a patent within seven months, in the case of a design or trade mark within four months, from applying for protection (*e*). But the patentee, or proprietor of the design or trade mark, will not be entitled to recover damages for infringements before acceptance of his complete specification, or registration of his design or trade mark (*f*). The prior publication during such periods in the United Kingdom or the Isle of Man of any description of the invention, or the use of the invention, or the exhibition or use of the design, or the publication of a description or representation of the design, or the use of the trade mark will not invalidate the patent, or the registration of the design or trade mark (*g*). The application for the grant of a patent, or registration of a design or trade mark, is to be made in the ordinary manner, except that any trade mark, the registration of which has been duly applied for in the country of origin, may be registered (*h*).

The above provisions may be applied by an Order in Council to any British possession, the legislature of which has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country (*i*).

(*e*) 46 & 47 Vict. c. 57, s. 103 (1);
48 & 49 Vict. c. 63, s. 6.

(*g*) S. 103 (2).

(*h*) S. 103 (3).

(*f*) 46 & 47 Vict. c. 57, s. 103 (1).

(*i*) S. 104.

Chap. X.

CHAPTER X.

CHOSSES IN ACTION (*continued*).

Copyright.

ANOTHER species of incorporeal personal property is Copyright or the rights of an author.

Unpublished works.

Great question arose as to the extent of the rights of an author in his compositions of literature, art, or science. All were agreed that his property in a work unpublished could not be disputed (*a*). Speaking of this with reference to a literary work, Lord Mansfield, C.J., in a leading case, described it as an incorporeal right to print a set of intellectual ideas or modes of thinking, communicated in a set of words and sentences and modes of expression (*b*). And, again, in a later case, Erle, J., thus referred to it (*c*):—

“The origin of the property is in production. As to works of imagination and reasoning, if not of memory, the author may be said to create, and, in all departments of mind, new books are the product of the labour, skill, and capital of the author. The subject of property is the order of words in the author’s composition; not the words themselves, they being analogous to the elements of matter, which are not appropriated unless combined, nor the ideas expressed by those words, they existing in the mind alone, which is not capable of appropriation. The nature of the right of an author in his works is analogous to the rights of ownership in other personal property.

* * * * *

“Thus, if after composition the author chooses to keep his

(*a*) See *per* Lord Cottenham, L.C., in *Prince Albert v. Strange*, 1 Mac. & G. 42.

(*b*) *Millar v. Taylor*, 4 Burr. 2396.
 (*c*) *Jefferys v. Boosey*, 4 H. of L. Cas. 867.

writings private, he has the remedies for wrongful abstraction of copies analogous to those of an owner of personalty in the like case. He may prevent publication; he may require back the copies wrongfully made; he may sue for damages if any are sustained; also, if the wrongful copies were published abroad, and the books were imported for sale without knowledge of the wrong, still the author's right to his composition would be recognised against the importer, and such sale would be stopped.

* * * * *

“Again, if an author chooses to impart his manuscript to others without general publication, he has all the rights for disposing of it incidental to personalty. He may make an assignment either absolute or qualified in any degree. He may lend, or let, or give, or sell any copy of his composition, with or without liberty to transcribe, and if with liberty of transcribing, he may fix the number of transcripts which he permits. If he prints for private circulation only, he still has the same rights, and all these rights he may pass to his assignee.”

In 1709, the statute 8 Anne, c. 19, was passed, imposing penalties for the protection of the exclusive rights of authors and their assigns to print, publish, and dispose of, copies of their works for the term of fourteen years, and for another term of the same duration if the author should be living at the end of the first term. The question arose, but was never finally determined, whether anterior to the statute of Anne there existed at common law a copyright in published books more extensive in its nature and duration than the right conferred or expressed by that statute. The weight of authority in the time of Lord Mansfield was in favour of the existence of such a right, but the doctrine found less favour in modern times (*d*). The continued existence of such right after the passing of the statute was decided by

I. Books.

8 Anne, c.
19.

(*d*) *Per Williams, J., in Reade v. v. Boosey*, 4 H. of L. Cas. 815; and *Conquest*, 9 W. R. 435. See *Jefferys Millar v. Taylor*, 4 Burr. 2303.

Chap. X.

the majority of the judges, and it was also decided that no such right existed after the expiration of the period prescribed by the Acts (*e*).

15 Geo. III.
c. 53.

In consequence of such decision, in 1775 the statute 15 Geo. III. c. 53 was passed for enabling the two Universities in England, the four Universities in Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books, given or bequeathed to them for the advancement of learning and other beneficial purposes of education (*f*). And in 1801 and 1814 the statutes 41 Geo. III. c. 107 and 54 Geo. III. c. 156 were passed extending for the benefit of authors the period of copyright.

5 & 6 Vict.
c. 45.

In 1842 the statutes, 8 Anne, c. 19, 41 Geo. III. c. 107, and 54 Geo. III. c. 156, were repealed by the statute 5 & 6 Vict. c. 45, by which, as amended, the copyright of authors and their assigns in 'books' and in 'dramatic pieces or musical compositions' is now regulated.

'Book' is defined to mean and include (*g*):—

"Every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published."

And 'dramatic piece' is defined to mean and include (*h*):—

"Every tragedy, comedy, play, opera, farce, or other scenic, musical or dramatic entertainment."

(*e*) See *per Williams, J.*, in *Reade v. Conquest*; 9 W. R. 435; referring to *Donaldson v. Beckett*, 4 Burr. 2408. There is an interesting note by the reporter, at the end of the latter case, as to "the real and true times and persons when and by whom the art of printing was originally discovered, and

when and how it was afterwards first introduced into this country."

(*f*) Recognised and preserved in 5 & 6 Vict. c. 45, s. 27.

(*g*) 5 & 6 Vict. c. 45, s. 2. A mere book in form is not included: *Schore v. Schmincke*, L. R. 33 Ch. D. 546.

(*h*) 5 & 6 Vict. c. 45, s. 2.

And 'Copyright' is defined to mean (*i*):—

"The sole and exclusive liberty of printing or otherwise multiplying copies."

It also, in reference to dramatic pieces and musical compositions, means the right of public representation or performance (*k*).

The object of the Act, as expressed in the preamble, was to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world.

The Act itself has been described as a conspicuous instance of obscurity of style, with its arrangement even worse than its style (*l*).

The Act of 1842 has been extended or amended, as regards books imported from abroad by the Customs Consolidation Act, 1876 (*m*), and as regards musical compositions, by the Copyright (Musical Compositions) Act, 1882 (*n*).

By the Copyright Act, 1842, the term of copyright in every 'book' published in the lifetime of its author is the life of the author and seven years after his death, or 42 years from first publication if the seven years sooner expire; and in every 'book' published after his death the term is 42 years from first publication; and such copyright is the property of the proprietor of the manuscript and his assigns (*o*).

Extent and duration of copyright.

It has been held that the publication of the book must be

(*i*) 5 & 6 Vict. c. 45, s. 2.

(*k*) Ss. 11, 20, 21, 22, 24.

(*l*) Report of Commissioners, 1878.

(*m*) 39 & 40 Vict. c. 36, ss. 42, 44,

and 45.

(*n*) 45 & 46 Vict. c. 40.

(*o*) 5 & 6 Vict. c. 45, s. 3.

Chap. X. in the United Kingdom, that the area, over and through which protection is granted by the Act, is the whole of the British dominions; and that the protection is given to the author, whether a native-born subject of the Crown, or an alien friend sojourning in the United Kingdom or elsewhere in the British dominions (*p*).

The same term as given to authors of 'books' is given to a publisher or other person projecting, conducting and carrying on, or being the proprietor of, any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, who employs any person to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, upon the terms that the copyright shall belong to such publisher or other person and be paid for by him; except that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature (not encyclopædias), after 28 years from publication the right of publishing the same in a separate form reverts to the author for the remainder of the term, his consent to such publication in the meanwhile being necessary (*q*).

Representing
or performing
dramatic
piece or
musical
composition.

The sole liberty of representing or performing, or causing, or permitting to be represented or performed, any dramatic piece or musical composition is made to endure and be the property of the author and his assigns for the same term as the copyright in books; except that the first public repre-

(*p*) *Routledge v. Low*, L. R. 3 E. & I. Ap. 100. Their Lordships were equally divided as to whether or not it extends to alien friends wherever resident. Now as to a work first pro-

duced in the colonies, see 49 & 50 Vict. c. 33, s. 8; *post*, pp. 222, 223.

(*q*) 5 & 6 Vict. c. 45, s. 18. The "Times" held to be such a 'periodical': *Walter v. Howe*, W. N. (1881), 72.

sentation or performance is equivalent to first publica- Chap. X.
tion (*r.*)

No assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition is to convey the right of representing or performing the same, unless the assignment is entered on the register, to be spoken of directly, expressing the intention of the parties that such right should pass (*s*). The penalties on persons infringing the sole liberty of representing dramatic pieces, imposed by the statute 3 Wm. IV. c. 15, are extended to infringement of the rights of the author or his assignee under the Act of 1842, both in respect of dramatic pieces and musical compositions (*t*); namely, for each representation not less than forty shillings, or the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever damages are the greater: and they are recoverable in any Court having jurisdiction in that part of the British dominions in which the offence is committed (*u*).

In the case of a musical composition, published after August 10th, 1882, to prevent the right of public representation or performance there must be notice on the title page that such right is reserved (*x*).

A book of registry is required by the Act of 1842 to be kept at Stationers' Hall, wherein may be registered the proprietorship in the copyright of books and assignments

(*r*) 5 & 6 Vict. c. 45, s. 20.

(*s*) S. 22.

(*t*) 3 & 4 Wm. IV. c. 15, s. 2; 5 & 6 Vict. c. 45, ss. 21, 24. See *Duck v. Bates*, L. R. 13 Q. B. D. 843; *Wall v. Taylor*, 11 Q. B. D. 102.

(*u*) 3 Wm. IV. c. 15, s. 2.

(*x*) 45 & 46 Vict. c. 40. A Bill is now before Parliament for enabling a

nominal penalty only to be imposed, leaving costs in the Judge's discretion, in respect of an unauthorised representation or performance of any musical composition whenever published, and exempting the proprietor, &c., of the place of representation or performance, not wilfully permitting the same.

3 & 4 Wm.
IV. c. 15.

45 & 46 Vict.
c. 40.

Registration.

Chap. X. thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses affecting such copy-right (*y*). The time of first publication or first public representation, as the case may be, must be entered (*z*). And no proprietor of copyright may sue or proceed for any infringement before registration, which otherwise is optional (*a*).

Piracy.

A right of action is given to the proprietor in any Court of Record in that part of the British dominions in which piracy or infringement of his copyright in any book is committed; that is to say, the printing or causing to be printed, for sale or exportation, without his consent in writing, or importing for sale or hire any book so unlawfully printed from parts beyond the sea, or knowingly selling, publishing, or exposing for sale or hire or causing the same to be done, or possessing for sale or hire any book so unlawfully printed or imported without such consent (*b*). All pirated copies of a book are made the property of the registered proprietor of the copyright, who may sue for the same damages (*c*). It has been held that the author of a novel is not protected against having his novel put into the form of a drama by different persons, and it makes no difference that he has himself dramatised it, provided the one drama is not borrowed from the other (*d*).

All actions or proceedings must be commenced within twelve calendar months next after offence committed (*e*). But such limitation of time is not to extend to proceedings

(*y*) 5 & 6 Vict. c. 45, s. 11.

(*z*) Ss. 13, 14, 20. See *Thomas v. Turner*, L. R. 33 Ch. D. 292.

(*a*) 5 & 6 Vict. c. 45, s. 24.

(*b*) S. 15.

(*c*) S. 23. See *Chappell v. Boosey*,

L. R. 21 Ch. D. 232.

(*d*) *Toole v. Young*, L. R. 9 Q. B. 523; *Reade v. Conquest*, 9 W. R. 435.

(*e*) 5 & 6 Vict. c. 45, s. 26; 3 Wm. IV. c. 15, s. 3.

Chap. X.

for copies of books which after publication must in all cases be delivered for the use of the Library of the British Museum, and, after demand, for the use of the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin (*f*).

It is expressly enacted that all copyright shall be deemed personal property, and shall be transmissible by bequest, or in case of intestacy shall be subject to the same law of distribution as other personal property (*g*).

Personal
property

By the Customs Laws Consolidation Act, 1876, there are prohibited to be imported or brought into the United Kingdom, subject to forfeiture and being destroyed or otherwise disposed of as the Commissioners of Customs may direct,

Books pro-
hibited to be
imported.
39 & 40 Vict.
c. 36.

“ Books wherein the copyright shall be first subsisting, first composed, or written or printed in the United Kingdom, or printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire ” (*h*).

The Commissioners are to cause to be made, and publicly exposed at the Custom Houses in the several ports, lists of all books in which the copyright is subsisting, and as to which the proprietor or his agent has given notice in writing accompanied with the prescribed declaration (*i*).

For the protection of authors of lectures and their assigns against the publication of lectures without their consent, the sole right and liberty of printing and publishing lectures was, by the statute 5 & 6 Wm. IV. c. 65, declared to belong to the author or the person to whom he had sold or

II. Lectures.
5 & 6 Wm. IV.
c. 65.

(*f*) 5 & 6 Vict. c. 45, ss. 6—10, 26.

(*g*) S. 25.

(*h*) 39 & 40 Vict. c. 36, s. 42.

(*i*) Ss. 44, 45.

Chap. X.

otherwise conveyed the copy thereof in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose ; and penalties were imposed for the infringement of such copyright. But the Act does not extend to lectures, of the delivery of which notice in writing has not been given to two justices within five miles, at least two days before delivering the same, or to lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation (*k*). The Act does not prohibit, or protect any person from, redelivery of lectures.

III. Engravings, etchings, prints, lithographs.

8 Geo. II.

c. 13.

7 Geo. III.

c. 38.

17 Geo. III.

c. 57.

15 Vict. c. 12,

s. 14.

The piracy of the works of Hogarth led, it is said (*l*), to the passing, in 1735, of the first statute, 8 Geo. II. c. 13, for conferring on the inventor *and* designer a copyright in engravings, etchings, or works in mezzotinto or chiaro-oscuro, of any historical or other prints. That Act was extended by the subsequent statutes 7 Geo. III. c. 38, 17 Geo. III. c. 57, & 15 Vict. c. 12, s. 14; the joint effect of which is to secure the copyright or sole right of printing and reprinting to every person who “invents *or* designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention, causes or procures to be designed, engraved, etched or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map (*m*), chart, or plan, or any other print or prints whatsoever, and to every person who engraves,

(*k*) 5 & 6 Wm. IV. c. 65, s. 5.

(*l*) Copinger on Copyright, 351.

(*m*) Query, whether these Acts, or only 5 & 6 Vict. c. 45, apply to maps.

See *Stannard v. Lee*, L. R. 6 Ch. Ap. 346; and *Stannard v. Harrison*, 19 Tr. R. 811.

etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design" (*n*), including "prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely" (*o*).

The term of copyright will endure for twenty-eight years from first publication (*p*). To be entitled the name of the proprietor must on publication appear on every plate or print (*q*), but registration is not provided for. Any offender is made subject to penalties within six months after the offence (*r*), and to damages at the suit of the proprietor (*s*).

Duration of
copyright and
enforcement.

The first Act for Protection of Copyright in Sculpture was passed in 1799, "for encouraging the art of making new models and casts of busts and other things" (*t*); but proving ineffectual, it was in 1814 replaced by the present Sculpture Copyright Act, 54 Geo. III. c. 56. By that Act the sole right and property of all new and original sculptures, models, copies, and casts of any of the subjects therein mentioned were vested in the person making or causing the same to be made for the term of fourteen years from "first putting forth or publishing" the same with the proprietor's name and the date thereof (*u*). An action for damages may, within six calendar months from the offence, be brought by the proprietor or his assignee against any

IV. Sculp-
ture.
54 Geo. III.
c. 56.

-
- | | |
|---|--|
| (<i>n</i>) 15 Vict. c. 12, s. 14, preamble. | c. 38, s. 6. |
| (<i>o</i>) S. 14. | (<i>s</i>) 17 Geo. III. c. 57. See 24 & 25 |
| (<i>p</i>) 7 Geo. III. c. 38, s. 7. | Vict. c. 101. |
| (<i>q</i>) 8 Geo. II. c. 13, s. 1; <i>Graves v.</i> | (<i>t</i>) 38 Geo. III. c. 71. |
| <i>Ashford</i> , L. R. 2 C. P. 410. | (<i>u</i>) 54 Geo. III. c. 56, s. 1. |
| (<i>r</i>) 8 Geo. II. c. 13, s. 1; 7 Geo. III. | |

Chap. X.

person during that term making or importing, or causing to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or cast (*x*) ; but the purchaser of the copyright by deed attested is protected from any action for copying, casting, or vending the same (*y*). After the fourteen years, if the original proprietor is still living, the copyright is to return to him for a further term of fourteen years (*z*).

Registration.

Under the Designs Act, 1850, provision was made for enabling the proprietor of any sculpture, model, copy, or cast, to register the same, and then to recover penalties in respect of the offences above mentioned, which gave him only a right of action for damages under the Sculpture Copyright Act (*a*) : but the whole Act was repealed by the Patents, Designs, and Trade Marks Act, 1883 (*b*).

V. Paintings,
drawings,
photographs.
25 & 26 Vict.
c. 68.

The last of the Fine Arts to obtain the protection of copyright were paintings, drawings, and photographs, namely in 1862, when it was conferred on the authors of such works by the statute 25 & 26 Vict. c. 68. It is limited to an author who is a British subject or resident within the dominions of the Crown ; but it is conferred on such author of every original painting, drawing, and photograph (*c*), made either in the British dominions or elsewhere, and not sold or disposed of before the 29th July, 1862, and his assigns (*d*) ; to him and them is given the sole and exclusive right of copying, engraving, reproducing and multiplying such painting or drawing, and the design

(*x*) 54 Geo. III. c. 56, ss. 3, 5. See 5 & 6 Vict. c. 97, s. 2.

(*y*) 54 Geo. III. c. 56, s. 4.

(*z*) S. 6.

(*a*) 13 & 14 Vict. c. 104, ss. 6, 7.

(*b*) 46 & 47 Vict. c. 57, s. 113,

Sched. III. See s. 60.

(*c*) As to who is the 'author' of a photograph, see *Nottage v. Jackson*, L. R. 11 Q. B. D. 627.

(*d*) 25 & 26 Vict. c. 68, s. 1.

thereof, or such photograph and the negative thereof, by any means and of any size, for the term of the life of the author and seven years after his death (*e*). Where, however, any painting or drawing, or the negative of any photograph is for the first time sold or disposed of after the above date, or is made or executed for or on behalf of any other person for a good or valuable consideration, in order to retain the copyright it must be expressly reserved by agreement in writing signed, at or before the sale or disposition, by the vendee or person for whom the same was made; and in like manner for such vendee or assignee to be entitled to any copyright, there must, at or before such sale or disposition, be an agreement in writing signed by the person so selling or disposing of the same or by his agent duly authorised (*f*). The effect of this would seem to be, that if there is no agreement in writing, the copyright ceases to exist (*g*).

A register is to be kept at Stationers' Hall of every copy-
right under the Act, and of every subsequent assignment of it: until registration no proprietor is entitled to the benefit of the Act, and no action is sustainable, or penalty recoverable, in respect of anything done before registration (*h*). Registration.

In case of piracy or infringement of copyright a penalty, Piracy.
not exceeding 10*l.*, in favour of the proprietor of the copy-
right is imposed upon the offender, together with forfeiture
of all piratical copies, imitations, &c., recoverable by sum-
mary proceeding before justices (*i*); and also a right to

(*e*) 25 & 26 Vict. c. 68, s. 1.

(*f*) *Ib.*

(*g*) See Digest of the Law of Copy-
right, by Sir James Stephen, art. 21.
But the Commissioners, in their report
(§ 102), say, that if the picture is
painted on commission, instead of

being sold after being painted, the
copyright, in the absence of any agree-
ment, vests in the person for whom
the picture is painted.

(*h*) 25 & 26 Vict. c. 68, ss. 4, 5.

(*i*) Ss. 6, 8, 10.

Chap. X.

bring action for damages and for an injunction is given to the proprietor of the copyright (*k*). Also penalties are imposed to prevent fraudulent productions and sales, and spurious or altered works (*l*).

Personal
property—
assignment.

It is expressly enacted that all copyright under the Act is to be deemed personal estate, and shall be assignable at law; and that every assignment and every license to use or copy by any means or process the design or work, subject of copyright, must be by some note or memorandum in writing signed by the proprietor or his agent appointed for that purpose in writing (*m*).

VI. Inter-
national and
colonial
copyright.

As regards literary and artistic works first published in a foreign country, certain statutes, styled the International Copyright Acts (*n*), have been passed, authorising Her Majesty by Order in Council to direct that the author shall have copyright in the same during the period specified by the Order, which must not exceed the period during which authors of the like works first published in the United Kingdom have copyright. In September, 1885, an International Conference was held at Berne, and a draft convention agreed to for giving to authors of literary and artistic works, first published in one of the countries parties to the convention, copyright in such works throughout the other countries parties to the convention. For the purpose of carrying such convention into effect in Her Majesty's dominions, the International Copyright Act, 1886, was passed (*o*). By the same Act the different Copyright Acts already referred to were made to apply to literary or artistic

(*k*) 25 & 26 Vict. c. 68, ss. 9, 11.

(*l*) Ss. 7, 8.

(*m*) S. 3.

(*n*) 7 & 8 Vict. c. 12; 15 & 16 Vict.

c. 12; 25 & 26 Vict. c. 68, s. 12; 38 & 39 Vict. c. 12.

(*o*) 49 & 50 Vict. c. 33.

works first produced in a British possession, in like manner as they apply to a work first produced in the United Kingdom, provided that the enactments respecting registration are not to apply if the law of such possession provides for registration, and the delivery of a copy of a book to the British Museum, &c., shall not be required (*p*). Chap. X.

(*p*) 49 & 50 Vict. c. 33, s. 8.

Chap. XI.

CHAPTER XI.

ENFORCEMENT OF DEBTS.

I. Liability of
property to
debts.

A MAN'S personal property of whatever nature is, like his real property, applicable in satisfaction of his debts, in his lifetime and after his death. In 'debts' is included any money which he is directed by judgment or order to pay. Under the Rules of the Supreme Court, 1885 (*a*), where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property, it is not necessary to make any demand; but the person so directed is bound to obey the judgment or order upon being duly served with the same. As this duty is not always fulfilled, we will consider the modes of enforcing it against his personal property; also we will consider how a judgment for the recovery of any property, other than (land or) money, may be enforced (*b*).

Modes of
enforcing
judgments,
&c.

Under the Rules of the Supreme Court, 1883 (*c*), a judgment or order for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court, whose jurisdiction was transferred by the Judicature Act, 1873, might have been enforced at its passing; that is to say, as regards the debtor's personal property, the person to whom the money is payable may, as soon as it is payable,

(*a*) R. S. C. Ord. XLII. rr. 1, 24.

(*b*) There are further remedies *in personam*, viz., of imprisonment under the Debtors Act, 1869 32 & 33 Vict. c. 62, s. 5), and of attachment (R. S. C.

1883, Ord. XLIV. ; 32 & 33 Vict. c. 62, s. 4; and 41 & 42 Vict. c. 54, s. 1).

(*c*) R. S. C. 1883, Ord. XLII. rr. 3, 24, 28; and Ord. LXXI. r. 1.

sue out a writ of *feri facias* (*d*), apply for an order to attach debts owing or accruing from a third person to the debtor (*e*), for equitable execution (*f*), or for a charging order upon the debtor's stock or shares in the Government funds or public companies (*g*). Where the judgment or order is to pay money into Court, or to do any other act in a limited time, the person prosecuting the same may issue a writ of sequestration (*h*). Where the judgment or order is against a corporation, by leave a writ of sequestration may be issued against the corporate property or the property of the directors or other officers (*i*).

A judgment for the recovery of any property other than (land or) money may be enforced by writ for delivery of the property, or by writ of sequestration (*k*). Where the judgment or order is against a firm, execution may issue (1) against any property of the partnership, (2) against any person who has appeared in his own name, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner, (3) against any person who has been served, as a partner, with the writ of summons, and has failed to appear; if execution is claimed against any other person, as being a member of the firm, leave must be given (*l*).

Under a writ of *feri facias* (commonly called *fi. fa.*), the sheriff or his officer is at common law empowered to seize and sell the debtor's goods. It is so called from the commencing words: "We command you that of the goods and chattels of (the debtor) in your bailiwick you cause to be

Writ of
feri facias.

(*d*) R. S. C. 1883, Ord. XLII. r. 17; and Ord. XLVIII. r. 1.

(*e*) Ord. XLV. See Ord. XLII. r. 32.

(*f*) Ord. XLII. rr. 3, 28.

(*g*) Ord. XLVI. r. 1.

(*h*) Ord. XLIII. r. 6.

(*i*) Ord. XLII. r. 31.

(*k*) *Ib.* r. 6. And see r. 33.

(*l*) Ord. XLII. r. 10.

Chap. XI. made the sum of £ , &c." (m). He is also by the statute, 1 & 2 Vict. c. 110, empowered to seize money or bank-notes, cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money, and to deliver any money or bank-notes to the execution creditor, and to hold the cheques and other securities for money as security for the amount by the writ directed to be levied, and he may sue for the amount secured thereby (n).

The title of any person acquired *bond fide* and for valuable consideration, without notice that a writ had been delivered to the sheriff, to goods of the debtor before actual seizure is protected by the Mercantile Law Amendment Act, 1856 (o).

By the Bankruptcy Act, 1883, it is enacted that a sale by the sheriff of a debtor's goods under an execution for a sum exceeding 20*l.* must be by public auction, unless the Court from which the process issued otherwise orders (p).

Writs in aid

Where the sheriff returns that the goods remain upon his hands unsold for want of buyers, the execution creditor may sue out a writ of *venditioni exponas*, that is, a writ to the sheriff directing him to expose and sell the goods for the best price that can be got (q).

Where the person against whom the writ of *fi. fa.* was issued is a beneficed clerk, and the sheriff returns that he has not any goods or chattels (or any lay fee) in his bailiwick, the execution creditor may sue out a writ of *feri facias de bonis ecclesiasticis*, or of *sequestrari facias de bonis ecclesiasticis*. Such writs are addressed to the bishop: the

(m) See form in R. S. C. 1883, App. H., No. 1.

(n) 1 & 2 Vict. c. 110, s. 12.

(o) 19 & 20 Vict. c. 97, s. 1.

(p) 46 & 47 Vict. c. 52, s. 145, See

Hunt v. Fensham, L. R. 12 Q. B. D. 162; *Hunt v. Clifford*, W. N. (1884), 86.

(q) R. S. C. 1883, Ord. XLIII. rr. 2, 5. For form, see App. H., No. 4.

former commands him "that of the ecclesiastical goods of (the debtor) clerk in your diocese, you cause to be made £ , &c.;" the latter commands "that you enter into the said rectory (or vicarage) and parish church of , and take and sequester the same in your possession, and hold the same in your possession until you shall have levied the said £ and interest aforesaid of the (rents, tithes, &c.), and other ecclesiastical goods in your diocese of and belonging to the said rectory, &c." (r).

Chap. XI.

The attachment of debts by a third person, to the debtor is effected by a 'garnishee order;' such third person being entitled the garnishee (s). Application is made on affidavit showing that the judgment or order is unsatisfied, and that another person is indebted to the debtor (t), and the order is that all debts, owing or accruing from the garnishee to such debtor, shall be attached to answer the judgment or order. Service of the order or notice thereof to the garnishee binds such debts in his hands (u). If the amount is not paid, execution may be ordered to issue against the garnishee (x); on the other hand, if he dispute his liability, or set up that his debt belongs to a third person, or a third person has a lien or charge upon it, such issues will be tried (y). Also the party entitled to enforce the judgment or order may apply for an order that the debtor be examined as to whether any and what debts are

Attachment
of debts
Garnishee
order.

(r) R. S. C. 1883, Ord. XLIII. rr. 3, 4, 5. Forms, App. H., Nos. 5, 6, 7.

(s) Ord. XLV. A similar process, under the name of 'foreign attachment,' has from ancient time issued out of the Lord Mayor's Court in the City of London and the Tolzey Court in the city of Bristol. See *Wadsworth v. Queen of Spain*, 17 Q. B. 171;

Bruce v. Wait, 1 Man. & G. 1.

(t) R. S. C. 1883, App. B., No. 25. Form of affidavit.

(u) R. S. C. 1883, Ord. XLV. r. 2. See *In re General Horticultural Co.*, L. R. 32 Ch. D. 512.

(x) R. S. C. 1883, Ord. XLV. r. 3.

(y) *Ib.* rr. 4, 5, 6.

Chap. XI.

owing to him, and whether he has any and what other property or means of satisfying the judgment or order (z).

Charging
order.

We have seen the sheriff's powers in execution of a writ of *fi. fa.* with regard to the debtor's securities for money, and it will be remembered how that any person claiming to be interested in a fund standing in the books of a company, or of a fund in Court, may protect his title by notice, in lieu of the former process by writ of *distringas*, or by obtaining a stop order, as the case may be (a). A judgment creditor may also apply for a Charging Order for payment of the debt upon the debtor's interest in any Government funds or stock, or shares in a public company or the dividends thereof, whether in possession, remainder, or reversion, and whether vested or contingent, and whether being funds in Court or not, and whether standing in his own name or in the name of a trustee for him, and such order will entitle the creditor to the same remedies as if the charge had been made by the debtor; but no proceedings are to be taken to have the benefit of the charge until after six months from the order (b); in order to prevent the debtor from disposing of his interest the order may be made in the first instance *ex parte*.

Equitable
execution.

Equitable execution is had by obtaining the appointment of a receiver in respect of monies payable to the judgment debtor to which garnishee proceedings are not applicable; for instance, future income of a trust fund in the hands of trustees (c), income of a reversionary interest under a will (d),

(z) R. S. C. 1883, Ord. XLII. r. 32.

(a) *Anle*, pp. 98, 100.

(b) R. S. C. 1883, Ord. XLVI. r. 1; applying 1 & 2 Vict. c. 110, ss. 14, 15, and 3 & 4 Vict. c. 82, s. 1. See *Leggott v. Western*, L. R. 12 Q. B. D. 287.

For forms of order, see R. S. C. App. K., Nos. 27—29.

(c) *Webb v. Stenton*, L. R. 11 Q. B. D. 518.

(d) *Fuggle v. Bland*, L. R. 11 Q. B. D. 711.

a fund in Court payable to the debtor (*e*). Before the Judicature Acts such execution could only be had out of the Court of Chancery (*f*). Chap. XI.

A writ of sequestration is issued against all the estate and effects of the disobedient person ; it is addressed to not less than four commissioners, who are empowered, or any three or two of them, to enter upon all his real estate, and to collect, receive and sequester into their hands, not only all the rents and profits of his real estate, but also all his goods, chattels and personal estate whatsoever, and they are commanded to enter and collect, take and get into their hands, not only the rents and profits of his real estate, but also all his goods, chattels and personal estate, and to detain and keep the same under sequestration in their hands until he pay, &c. (*g*). Writ of sequestration.

A writ of delivery is addressed to the sheriff, and directs him to cause the chattels to be returned to the plaintiff, and, if they cannot be found, to distrain the defendant by all his lands and chattels in the sheriff's bailiwick until he deliver the property, or, at the option of the plaintiff, to cause to be made of the defendant's goods the assessed value, if any, of the property ; and by the same or a separate writ the plaintiff may have made of the defendant's goods the damages and costs awarded and interest (*h*). Writ of delivery.

The execution of judgments, decrees or orders of County Courts is enforceable against the debtor's goods (including money, bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money), Judgments of County Courts.

(*e*) *Westhead v. Riley*, L. R. 25 Ch. D. 413.

(*f*) 36 & 37 Vict. c. 66, s. 25 (8).

(*g*) R. S. C. 1883, Ord. XLIII.

rr. 6, 7, App. H. No. 13.

(*h*) Ord. XLII. r. 6 ; Ord. XLVIII.

rr. 1, 2 ; form, App. H. Nos. 10, 11.

See *ante*, p. 225.

Chap. XI. under warrants to the high bailiff, in common law cases under the County Courts Acts, 1846 (*i*), in equity cases under the County Courts Equitable Jurisdiction Act, 1865 (*k*), and also, in both cases under the County Court Rules, 1886 (*l*). By the latter Act and by the Rules provision is also made for enforcement of a judgment or order for the recovery of any property other than land or money by a warrant of delivery issued to the bailiff (*m*). And by the Rules provision is made for enforcement of a judgment or order for the recovery or payment of money by a garnishee order (*n*).

Leave to issue execution in certain cases.

Leave must be obtained to issue execution, whether out of the High Court or a County Court, (1) after lapse of time from the judgment or order in the High Court of six years (*p*), in a County Court of two years (*q*); (2) where any change has taken place by death or otherwise in the parties entitled or liable to execution (*r*); (3) where a husband is entitled or liable to execution upon a judgment or order for or against a wife (*s*); (4) where a party is entitled to execution upon a judgment of assets *in futuro* or *quando acciderint* (*t*); (5) where a party is entitled to execution against any of the shareholders of a joint stock company

(*i*) 9 & 10 Vict. c. 95, ss. 95—97.
The goods are not bound until seizure:
Ex parte Williams, L. R. 7 Ch. Ap.
314. See *Ex parte Nelson*, 14 Ch. D.
41.

(*k*) 28 & 29 Vict. c. 99, s. 8.

(*l*) R. C. C. Ord. XXV. rr. 1, 4—
12.

(*m*) Ord. XXV. rr. 50, 51.

(*n*) Ord. XXVI. Formerly, under
the Common Law Procedure Acts,
1854, 1860 (17 & 18 Vict. c. 125, and
23 & 24 Vict. c. 126), and Orders in

Council, Nov. 10th, 1867, and May
18th, 1870.

(*p*) R. S. C. 1883, Ord. XLII.
rr. 22, 23 (*a*).

(*q*) R. C. C. 1886, Ord. XXV.
r. 6.

(*r*) R. S. C. Ord. XLII. r. 23 (*a*);
R. C. C. Ord. XXV. r. 9 (*a*).

(*s*) R. S. C. Ord. XLII. r. 23 (*b*);
R. C. C. Ord. XXV. r. 9 (*b*).

(*t*) R. S. C. Ord. XLII. r. 23 (*c*);
R. C. C. Ord. XXX. r. 10.

upon a judgment against the company, or against a public officer or other person representing the company (*u*). Chap. XI.

In the case of the death of a judgment debtor before satisfaction of the judgment, although leave must be obtained to issue execution (*x*), the judgment or order of whatever Court (*y*) if duly registered or re-registered within five years of his death, under 23 & 24 Vict. c. 38 (*z*), must be satisfied out of his personal estate in preference to his specialty or simple contract debts (*a*). If judgment is obtained by a creditor after the death of the debtor against his representative, he will be entitled to satisfaction of his judgment out of the debtor's personal estate in priority to other creditors, without registration, on the ground that the representative must have notice of any judgment against himself (*b*). The latter judgments, if more than one, take effect according to their respective dates (*c*); ordinary judgments take effect according to precedence in issuing execution.

Death of debtor—
priority.

But debts due to the Crown have priority to all debts, including judgment debts, of a deceased (*d*); and next to these, debts to which particular statutes give priority, as, moneys due to the parish by an overseer of the poor (*e*), moneys due to a friendly society by its officers (*f*), or to a savings bank by its officers (*g*), and regimental debts of an officer or soldier (*h*). After judgment debts must be satis-

(*u*) R. S. C. Ord. XLII. r. 23 (*d*); *Williams' Estate*, L. R. 15 Eq. 270; R. C. C. Ord. XXV. r. 9 (*c*). *In re Maggi*, 20 Ch. D. 545.

(*x*) *Ante*, p. 230.

(*y*) *Re Turner*, 33 L. J. (Ch.) 232.

(*z*) Ss. 3—5.

(*a*) See *Williams on Executors*, pt. iii. bk. ii. ch. ii. § 2. As to 'specialty' and 'simple contract' debts, see *M. L. R. P.* 115.

(*b*) *Re Rigby*, 12 W. R. 32; *In re*

(*c*) *Dollond v. Johnson*, 2 Sm. & G. 301.

(*d*) *Williams on Executors*, pt. iii. bk. ii. ch. ii. § 1.

(*e*) *Ib.*; 17 Geo. II. c. 38, s. 3.

(*f*) 38 & 39 Vict. c. 60, s. 15, § 7.

(*g*) 3 & 4 Wm. IV. c. 14, s. 28.

(*h*) 26 & 27 Vict. c. 57.

Chap. XI. fied debts by specialty and by simple contract, which since the 1st January, 1870, stand in equal degree (*i*).

Under the Judicature Act, 1875, in administration by the Court of the assets of a deceased, whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the same rules are to prevail as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities, and future and contingent liabilities respectively, as are in force under the law of bankruptcy with respect to the estates of persons adjudged bankrupt (*k*), of which hereafter.

II. Guaranties
—suretyship.

The payment of a debt, or the performance of a duty, is not unfrequently guaranteed by the promise of another person, styled a 'surety,' to answer for it in case of the failure of the one in the first instance liable to such payment or performance. For a guaranty to be enforceable, it is requisite that it should be in writing. It was enacted by the Statute of Frauds (*l*) that:—

"No action shall be brought . . . whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person . . . unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

Not only must the one person be liable, but the promise must be to the person to whom he is liable (*m*). It was

(*i*) 32 & 33 Vict. c. 46. See M. L. R. P. 115.

(*k*) 37 & 38 Vict. c. 85, s. 10. See further as to this provision, *post*, p. 266.

(*l*) 29 Car. II. c. 3, s. 4. As to pleading the statute, see *ante*, p. 28.

(*m*) *Eastwood v. Kenyon*, 11 Ad. & El. 438.

held that the consideration for the promise, as well as the contracting parties and the promise, must appear in the writing (*n*). To obviate this, which proved a great inconvenience by reason of the many unjust and technical defences raised in consequence in actions upon guaranties, it was enacted in the Mercantile Law Amendment Act, 1856 (*o*), as follows:—

Chap. XI.

S. 3. “No special promise to be made by any person after the passing of this Act to answer for the debt, default, or miscarriage of another person being in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorised, shall be deemed invalid to support an action, suit, or other proceeding, to charge the person by whom such promise shall have been made by reason only that the consideration for such promise does not appear in writing or by necessary inference from a written document.”

This does not dispense with the necessity of a consideration, which if questioned must still be proved, but it may be proved by parol evidence. It may be any benefit accruing to the promisor, or any loss, trouble, or disadvantage undergone by, or charged or imposed upon, the promisee or person to whom the promise is made (*p*).

When one person induces another to enter into an engagement by a promise to indemnify him against liability, that is not an agreement within the Statute of Frauds and required to be in writing; for instance, where a father induced his son to guarantee the debt of his son-in-law upon a promise that he would see him harmless (*q*).

(*n*) *Wain v. Walters*, 5 East, 10; ante, p. 22 (*x*). See notes to *Birkmyr v. Darnell*, 1 Sm. L. Ca. 326.

(*o*) 19 & 20 Vict. c. 97, s. 3.

(*p*) See definition of a legal con-

sideration in Smith on Contracts, 90; and see Smith's Merc. Law, 467.

(*q*) *Wildes v. Dudlow*, L. R. 19 Eq. 198.

Chap. XI.

Liability of
surety.

For a guaranty to be in force the person for whose debt it was given must be and continue liable, unless the surety has expressly contracted to remain liable notwithstanding the discharge of the principal (*r*): but the guarantor may limit his own liability as to time, particular dealing, or in other respects. If he mean to confine his liability to a particular dealing, &c., he should be careful to say so, or his guaranty, which is to be construed like any other written contract, namely, with reference to the circumstances under which it is entered into, may be construed a 'continuing' one (*s*). With regard to the effect of a change in a firm of partners to or for whom a guaranty has been given, the Mercantile Law Amendment Act, 1856 (*t*), has provided that it shall cease, except the contrary intention shall appear clear; it is enacted that:—

S. 4. "No promise to answer for the debt, default, or miscarriage of another, made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise in respect of anything done or omitted to be done after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties that such promise shall continue to be binding, notwithstanding such change shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise."

(*r*) *Cowper v. Smith*, 4 M. & W. 519.

(*s*) *Merle v. Wells*, 2 Camp. 413. See *Nottingham Hide Co. v. Bottrill*, L. R. 8 C. P. 694. As to withdrawal of continuing guarantee, see *Burgess v.*

Eve, 13 Eq. 450. As to effect of death of surety, *Coulthart v. Clementson*, 5 Q. B. D. 42; *Lloyds v. Harper*, 16 Ch. D. 290. *Semble*, the mere fact of death will not determine guaranty.

(*t*) 19 & 20 Vict. c. 97, s. 4.

To charge a surety it is not necessary that demand Chap. XI. should have been made upon the principal debtor, unless such demand is necessary to charge the debtor, or has been expressly stipulated for (*u*).

To discharge a surety mere forbearance to sue the principal debtor is not sufficient, or even signing a composition deed in which the remedies against sureties are preserved (*x*); but a binding agreement with the debtor, without the surety's assent, to give him time would have such effect. Discharge.

It has been said (*y*), there are three ways in which a surety may be discharged, namely, (1) by time being given to the debtor, (2) by an alteration in the contract between the principals, (3) by the principals dealing together so as to affect the position of the surety to his prejudice. Therefore where D. contracted to buy tar from a gas company, the amount supplied to be estimated on the last day of each month, and payment for the same to be made within the next fourteen days unless the company should allow a longer time, and P. became surety for the performance of the agreement by D., it was held that he was not liable for an unpaid balance due for July and for which the company took a promissory note from D. on 21st August, but that he was liable for further sums which became due in August and September (*z*).

What in general will discharge a surety is thus summarised in Smith's Mercantile Law (*a*):—

(*u*) See Bullen & Leake's Pleading (4th ed.), pt. i. 190.

(*x*) See *Kearsley v. Cole*, 16 M. & W. 128; *Green v. Wynn*, L. R. 4 Ch. Ap. 204.

(*y*) Per Bramwell, J., in *Croydon Gas Co. v. Dickinson*, L. R. 2 C. P. D. 49.

(*z*) *Croydon Gas Co. v. Dickinson*, L. R. 2 C. P. D. 46; and see *Liquidators of Overend, Gurney & Co. v. Liquidators of Oriental Financial Corporation*, L. R. 7 E. & I. Ap. 348.

(*a*) Smith's Mercantile Law, 472.

Chap. XI.

"If the creditor discharge the principal, or enter into any agreement with him by which the surety's situation is altered for the worse, or which would render a proceeding against the surety a fraud upon the principal, he discharges the surety; for instance, if he agree to give time to the principal: for then, if he forbear proceeding during the time given, he wrongs the surety by prolonging his responsibility; while, on the other hand, if he proceed against the surety, he gives him a remedy over against the principal, and thus exposes the latter to proceedings, contrary to the faith of his agreement. So, if he substitute a new agreement instead of that for the performance of which the surety was responsible, or the duties of the principal be so altered as materially to affect the peril of the surety, or if he be guilty of laches whereby a security to which the surety on paying the debt would be entitled is lost. But the surety will not be discharged by mere forbearance, unless, indeed, there be some stipulation in the guaranty binding the party guaranteed to use due diligence against the principal, nor by acceptance of a collateral security, nor if he himself have agreed to the indulgence given the principal or have subsequently assented to it."

Surety—
principal.

At any time after the debt becomes due, the surety, though he be not sued, has a right to call upon the principal to discharge the debt; "it being unreasonable that a man should always have such a cloud hanging over him" (b). After payment, or performance of the duty, he is entitled to stand in the place of the creditor and have the benefit of all other securities which the latter had against the principal (c), and, if there are co-sureties, to be indemnified by their contributing rateably to make good his loss and if he have paid more than his proportion of the demand. In furtherance of his right to an assignment of the securities held by the creditor and to indemnity from a co-surety, it

Co-sureties.

(b) *E. Ranelagh v. Hayes*, 1 Vern. 189. See *Woolridge v. Norris*, L. R. 6 Eq. 410.

(c) See *Forbes v. Jackson*, L. R. 19 Ch. D. 615.

was enacted by the Mercantile Law Amendment Act, Chap. XI. 1856 (*d*), as follows :—

S. 5. "Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at law to have been satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor, and to use all the remedies; and if need be, and upon a proper indemnity to use the name of the creditor in any action or other proceeding at law or in equity in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and loss sustained by the person who shall have so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be pleadable in bar of any such action or other proceeding by him: Provided always that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which as between those parties themselves such last-mentioned person shall be justly liable."

The above provision of the Statute of Frauds was evaded, by shaping the demand, not upon a special promise, which the statute supposes, but upon a tort or wrong done to the plaintiff by some false or fraudulent representation of the defendant to induce him to contract with another person; parol evidence was admitted of a representation as to the solvency or trustworthiness of such person, and proof that

Credit on
representa-
tion.

Chap. XI. credit was given on the faith of that representation. It being considered that such cases trenched upon the security intended to be afforded by the statute, the following provision requiring such representation to be in writing and signed by the party to be charged, was introduced into Lord Tenterden's Act, 9 Geo. IV. c. 14 (*e*):—

(9 Geo. IV.
c. 14, s. 6.)

S. 6. "That no action shall be brought whereby to charge any person upon, or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon (*f*), unless such representation or assurance be made in writing, signed by the party to be charged therewith."

The protection, it will be observed, is carried even further than that by the Statute of Frauds, for the writing must be signed by the party to be charged; while, under the earlier statute, the party might be charged on a writing by a person thereunto by him lawfully authorised, which left him exposed to be charged by the verbal representation of another that he had authority to sign (*g*).

(*e*) See *Lyde v. Barnard*, 1 M. & W. 101. As to the introduction into the section of the word 'upon,' Lord Abinger was of opinion that it must

be rejected as nonsensical.

(*f*) *Sic*.

(*g*) See *Lyde v. Barnard*, 1 M. & W. per Gurney, B., 104.

CHAPTER XII.

Chap. XII.ENFORCEMENT OF DEBTS (*continued*).

IF execution issued against a debtor has been levied by seizure and sale of his goods under process in an action in any Court, or in any civil proceeding in the High Court(*a*); or if he fails to pay a judgment, or to secure or compound for the same, within seven days of service upon him of a bankruptcy notice in manner and form prescribed by the Bankruptcy Act, 1883 (*b*), unless he can satisfy the Court having jurisdiction in bankruptcy that he has a counter-claim, set-off, or cross-demand equal to or exceeding the judgment debt, and which he could not set up in the action in which judgment was obtained; he commits an act of bankruptcy, by reason of which the whole of his estate, real and personal, may become distributable among all his creditors in satisfaction of his debts under the provisions of the Bankruptcy Act (*c*).

I. Bank-
ruptcy—
acts of.

(*a*) 46 & 47 Vict. c. 52, s. 4 (1) (*e*).

(*b*) S. 4 (1) (*g*). As to what is such a judgment debt, see *Ex parte Chinery*, L. R. 12 Q. B. D. 342; *Ex parte Schmitz*, *In re Cohen*, 12 Q. B. D. 509; *Ex parte Whinney*, *In re Sanders*, 13 Q. B. D. 476; *Ex parte Moore*, *In re Faithfull*, 14 Q. B. D. 627; *Ex parte Grimwade*, *In re Tennent*, 17 Q. B. D. 357. As to failure to pay, see *Ex parte Matthew*, 12 Q. B. D. 506. As to who may serve such notice, see *Ex parte Woodall*, 13 Q. B. D. 479; *Ex parte Blanchett*, *In re Keeling*, 17

Q. B. D. 303; *Ex parte Ide*, 17 Q. B. D. 755; *Ex parte Ford*, 18 Q. B. D. 369; *Ex parte Winterbottom*, *ib.* 446. Any creditor may avail himself of the act of bankruptcy: *Ex parte Dearle*, *In re Hastings*, 14 Q. B. D. 184. A second notice may be issued, so long as execution on the judgment can be issued: *Ex parte Feast*, W. N. (1887), 42.

(*c*) 46 & 47 Vict. c. 52. As to the Act generally, see the Author's "Exposition of the New Law of Bankruptcy."

Chap. XII.

A debtor also commits an act of bankruptcy if he makes a conveyance or assignment of his property to trustees for the benefit of his creditors generally (*d*) ; or if he makes a fraudulent conveyance, gift, delivery or transfer of his property, or any part of it (*e*) ; or if he makes any conveyance or transfer of his property or any part of it, or creates any charge on it which would be void as a fraudulent preference if he were adjudged bankrupt (*f*) ; or if with intent to defeat or delay his creditors he departs out of England, or being out of England remains out of it, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house (*g*) ; or if he files in the Court having jurisdiction in bankruptcy a declaration of his inability to pay his debts, or presents a bankruptcy petition against himself (*h*) ; or if he give notice to any of his creditors of suspension of payment (*i*).

Married
women.

An act of bankruptcy available for adjudication against her may be committed by a married woman carrying on a trade separately from her husband. By the Married Women's Property Act, 1882 (*k*), it is enacted :—

S. 1 (5.) "Every married woman carrying on a trade separately from her husband shall, in respect of her separate

(*d*) 46 & 47 Vict. c. 52, s. 4 (1) (*a*).

(*e*) *Ib.* s. 4 (1) (*b*). See *Ex parte Chaplin, In re Sinclair*, L. R. 26 Ch. D. 319 ; *Ex parte Johnson, In re Chapman*, 26 Ch. D. 338.

(*f*) 46 & 47 Vict. c. 52, s. 4 (1) (*c*), *post*, pp. 259 *et seq.*

(*g*) 46 & 47 Vict. c. 52, s. 4 (1) (*d*). See *Ex parte Brandon, In re Trench*, L. R. 25 Ch. D. 500.

(*h*) 46 & 47 Vict. c. 52, ss. 4 (1) (*f*), 168 (1). See s. 8 (1). And see *In re James* (a lunatic), L. R. 12 Q. B. D.

332.

(*i*) 46 & 47 Vict. c. 52, s. 4 (1) (*h*). See *Ex parte Nicholl, In re Walker*, L. R. 13 Q. B. D. 469 ; *Ex parte Oastler, In re Friedlander, ib.* 471 ; *Ex parte Gibson, In re Bolland*, W. N. (1887), 12.

(*k*) 45 & 46 Vict. c. 75, s. 1 (5) ; 46 & 47 Vict. c. 52, s. 152. As to what is included in 'property,' not 'powers,' see *Ex parte Gilchrist, In re Armstrong*, L. R. 17 Q. B. D. 521 ; *post*, p. 252.

property, be subject to the bankruptcy laws in the same way Chap. XII.
as if she were a *feme sole*."

A creditor, whose debt is sufficient to entitle him to Partners.
present a petition against all the partners of a firm, may
present it against any one or more partners of the firm
without including the others (*l*).

Proceedings are commenced by a petition in the Court Proceedings—
petition.
having jurisdiction in bankruptcy, that is, the High
Court or the County Court for the district in which the
debtor has resided or carried on business for the longest
period during the six months immediately preceding the
presentation of the petition (*m*), and it may be presented
either by a creditor or by the debtor (*n*); in the former
case provided that (*o*):—

(*a*.) "The debt owing by the debtor to the petitioning
creditor, or, if two or more creditors join in the petition, the
aggregate amount of debts owing to the several petitioning
creditors, amounts to fifty pounds; and

(*b*.) "The debt is a liquidated sum, payable either im-
mediately or at some certain future time; and

(*c*.) "The act of bankruptcy on which the petition is
grounded has occurred within three months before the
presentation of the petition; and

(*d*.) "The debtor is domiciled in England, or, within a
year before the date of the presentation of the petition, has
ordinarily resided, or had a dwelling-house or place of
business in England."

At any time after presentation of a petition the Court (*p*) Official
receiver.

(*l*) 46 & 47 Vict. c. 52, s. 110. See
also ss. 111—115, 40 (3), 59; sched. I.
r. 13, and sched. II. r. 18; in which
are contained all the provisions relat-
ing to partners.

(*m*) Ss. 92, 95, 96.

(*n*) Ss. 4 (1) (*f*), 5, 8. See *Ex*

parte Dearle, In re Hastings, L. R. 14
Q. B. D. 184.

(*o*) 46 & 47 Vict. c. 52, s. 6. As to
proof of domicile, see *Ex parte Cunning-
ham, In re Mitchell*, L. R. 13 Q. B. D.
418; *Ex parte Barne*, 16 Q. B. D. 522.

(*p*) 46 & 47 Vict. c. 52, s. 95.

Chap. XII.

may, if it is shown to be necessary for the protection of the estate, appoint the Official Receiver, that is, the administrative officer of the Board of Trade and also officer of the Court to which he is attached (*q*) to be *interim* receiver of the debtor's property, and to take immediate possession of it (*r*); and such Court, or any Court in which proceedings are pending against the debtor, may stay the pending proceedings (*s*).

Receiving
order.

After hearing a creditor's petition the Court may, if satisfied, make a receiving order for the protection of the debtor's estate (*t*); thereby the Official Receiver is constituted receiver of the debtor's property, and thereafter no unsecured creditor can proceed against the debtor or his property, except with leave of the Court (*u*). The Official Receiver acts as manager of the debtor's estate, or may appoint a special manager of it (*x*); and he may sell the property, though it be not of a perishable nature (*y*). Where the petition is filed by the debtor, the Court makes the receiving order forthwith (*z*).

Also a Court having bankruptcy jurisdiction may, on application to it by a judgment creditor for the committal of a judgment debtor, under the Debtors Act, 1869 (*a*), instead make a receiving order against the debtor, who will be deemed to

(*q*) 46 & 47 Vict. c. 52, s. 66.

(*r*) Ss. 10 (1). See s. 70.

(*s*) Ss. 10 (2).

(*t*) Ss. 5, 7 (3), (4), (5), 111; G. R. (1886), 157—169. As to power of Court to go behind judgment debt, see *Ex parte Lennox*, L. R. 16 Q. B. D. 315; *Ex parte Bonham*, *In re Tollemache*, 14 Q. B. D. 604; *Ex parte Anderson*, *In re Tollemache*, *ib.* 606. As to sufficient cause for dismissing the petition, see *Ex parte Dixon*, 13 Q. B. D. 118; *Ex parte Oram*,

In re Watson, 15 Q. B. D. 399. As to adjourning or dismissing petition, see *Ex parte Heywerth*, *In re Rhodes*, 14 Q. B. D. 49.

(*u*) 46 & 47 Vict. c. 52, s. 9. See *In re Mackintosh*, L. R. 13 Q. B. D. 235.

(*x*) 46 & 47 Vict. c. 52, ss. 70, 12.

(*y*) *In re Parker*, L. R. 15 Q. B. D. 196.

(*z*) G. R. 1886, 157 (1).

(*a*) 32 & 33 Vict. c. 62, s. 5.

have committed an act of bankruptcy at the time of such order (b). Chap. XII.

After the receiving order it becomes the duty of the Official Receiver to summon for a day, not later than fourteen days after the date of such order, the first meeting of creditors, at which he, or some person nominated by him, must preside (c). First meeting of creditors.

At the first meeting of creditors, or any adjournment thereof, after the receiving order, or at any time after adjudication (d) to be presently spoken of, the creditors may resolve, subject to the approval of the Court, to entertain a proposal for a composition in satisfaction of the debts due to them, or for a scheme of arrangement of the debtor's affairs (e). The provisions of a composition or scheme may be enforced by the Court on application by any person interested, and any disobedience of the Court's order will be deemed a contempt of Court, and the debtor may be committed to prison (f). If default is made in payment of any instalment, or for any sufficient cause, the Court may subsequently annul the composition or scheme and adjudge the debtor a bankrupt (g). Composition or arrangement.

On the other hand, if at the first meeting of creditors, or any adjournment thereof, they resolve that the debtor be adjudged bankrupt, or pass no resolution, or if they do not Adjudication.

(b) 46 & 47 Vict. c. 52, s. 103 (5). As to who may apply, see *Ex parte Fryer*, L. R. 17 Q. B. D. 718. As to procedure where County Court has not bankruptcy jurisdiction, see *In re Andrews*, 15 Q. B. D. 335. See also 46 & 47 Vict. c. 52, s. 122, giving County Courts power to make administration order where a judgment debtor is unable to pay forthwith. See *post*, p. 261.

(c) 46 & 47 Vict. c. 52, s. 70 (1) (c), sched. I.

(d) S. 23 (1).

(e) S. 18 (1). As to approval of Court, see *Ex parte Rogers*, L. R. 13 Q. B. D. 438; *Ex parte Campbell, In re Wallace*, 15 Q. B. D. 213; *Ex parte Reed*, 17 Q. B. D. 244.

(f) 46 & 47 Vict. c. 52, s. 18 (10).

(g) Ss. 18 (11), 23 (3).

Chap. XII.

meet, or if a composition or scheme is not accepted or approved, the Court must adjudge the debtor a bankrupt; and thereupon his property becomes divisible among his creditors, and vests in a trustee (*h*), who is to realise the property (*i*). On the application of the debtor himself the Court may at the time of making the receiving order or at any time thereafter adjudge him a bankrupt (*k*).

Trustee.
Committee of
inspection.

The trustee may be appointed by the creditors or by the committee of inspection (*l*), that is, a body of not more than five and not less than three, which may be appointed by the creditors to superintend the administration of the bankrupt's property by the trustee (*m*). Until a trustee is appointed the Official Receiver is trustee (*n*); during which time he may sell the debtor's property, though not of a perishable nature (*o*); and he acts during any vacancy in the office (*p*). He also is to act as trustee, and the Board of Trade is to take the place of the committee of inspection, in cases where a summary administration of the debtor's estate is ordered, namely, where it is not likely to exceed £300 in value (*q*).

The Official Receiver is also to be trustee of the estate of any deceased debtor whose estate is ordered to be administered according to the law of bankruptcy, under the power in that behalf conferred by the Act (*r*).

The trustee is empowered to sell the property of the bankrupt by public auction or private contract, and to transfer the whole to any person or company, or in parcels,

-
- | | |
|---|---|
| <p>(<i>h</i>) 46 & 47 Vict. c. 52, ss. 20 (1),
54.
(<i>i</i>) Ss. 50—53.
(<i>k</i>) G. R. (1886), 190.
(<i>l</i>) 46 & 47 Vict. c. 52, s. 21 (1).
(<i>m</i>) S. 22 (1).
(<i>n</i>) S. 54 (1).
(<i>o</i>) <i>Turquand v. Board of Trade</i>,</p> | <p>L. R. 11 Ap. Ca. 286.
(<i>p</i>) 46 & 47 Vict. c. 52, s. 70 (1) (<i>g</i>).
(<i>q</i>) S. 121.
(<i>r</i>) S. 125, <i>post</i>, p. 261. See <i>Ex parte May</i>, L. R. 13 Q. B. D. 552; <i>In re Weaver</i>, <i>Higgs v. Weaver</i>, 29 Ch. D. 236; <i>In re Hewitt</i>, 15 Q. B. D. 159.</p> |
|---|---|

Chap. XII.

and to give receipts for any money paid to him (s). Also with the permission of the committee of inspection he may carry on the business of the bankrupt for the beneficial winding of it up, accept as the price of any property of the bankrupt a sum of money payable at a future time, mortgage or pledge any part of the bankrupt's property for payment of his debts, make compromise or other arrangement in respect of debts and liabilities to or by the bankrupt, and divide in its existing form among creditors according to its estimated value any property which cannot be readily or advantageously sold (t); or he may appoint the bankrupt to superintend the management of the property, or to carry on his trade (if any), and may make the bankrupt an allowance for support of himself and family or for his services (u).

At any time after adjudication the creditors may by special resolution, entertain a proposal for a composition in satisfaction of the debts due to them, or for a scheme of arrangement of the bankrupt's affairs, subject to the approval of the Court, which will have the same consequences, and which the Court may annul in like manner, as a composition or scheme before adjudication (x).

At any time after adjudication the bankrupt may apply for an order of discharge (y). The order, if made, will release him from all debts provable in the bankruptcy, except a debt on a recognizance, a debt with which he may be chargeable for an offence relating to the public revenue, or on a bail bond for the appearance of any person prosecuted for any such offence, unless the Treasury certify in

Composition.

Discharge of bankrupt.

(s) 46 & 47 Vict. c. 52, s. 56 (1), (2).

In re Lazarus, W. N. (1887), 74.

(t) S. 57 (1), (4) — (9).

(y) 46 & 47 Vict. c. 52, s. 28; and

(u) S. 64.

see s. 29.

(x) S. 23. See *Ex parte Godfrey*,

Chap. XII.

writing their consent to his being discharged therefrom; and except a debt or liability incurred or forborne by any fraud (*z*). An order of discharge may be made subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property (*a*); in certain specified cases it must be refused, or its operation be suspended for a time, or be granted subject to conditions (*b*).

Debts
provable.

All debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, are debts provable in bankruptcy (*c*); with the following exceptions, namely, demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust (*d*), therefore damages in an action of tort, where judgment has not been signed before the receiving order, are not provable (*e*); nor, being incapable of valuation, are future weekly or monthly payments of alimony payable by a husband under an order of the Divorce Court (*f*); also a person having notice of an act of bankruptcy may not prove for any debt or liability contracted by the debtor subsequently to his having notice (*g*).

An estimate is to be made by the trustee, subject to an appeal to the Court, of any debt or liability which by reason

(*z*) 46 & 47 Vict. c. 52, s. 30, §§ 1 & 2.

(*a*) S. 28 (2), (6). See s. 44 (i); *Ex parte White*, L. R. 14 Q. B. D. 600; *Ex parte Salaman*, *ib.* 936; *Ex parte Castle Mail Packets Co.*, *In re Payne*, 18 Q. B. D. 154.

(*b*) 46 & 47 Vict. c. 52, s. 28 (2), (3).

(*c*) S. 37 (3), (8).

(*d*) S. 37 (1).

(*e*) See *In re Newman*, L. R. 3 Ch. D. 494; and *Ex parte Baum*, 9 Ch. Ap. 673.

(*f*) *Linton v. Linton*, L. R. 15 Q. B. D. 239.

(*g*) 46 & 47 Vict. c. 52, s. 37 (2).

of its being subject to a contingency, or for any other reason, Chap. XII. does not bear a certain value (*h*).

Where there have been mutual credits, mutual debts, or other mutual dealings between the debtor and a creditor, an account is to be taken of what is due from the one to the other in respect of such mutual dealings, and the one amount is to be set off against the other, and the balance only to be claimed or paid; but a creditor cannot claim the benefit of any set-off in any case where he had at the time of giving credit notice of an act of bankruptcy (*i*). As a general rule, and in the absence of special circumstances, the line as to set-off must be drawn at the date of the commencement of the bankruptcy (*k*).

The following debts are to rank equally between them- Priority.
selves, but to be paid in priority to all other debts, in the distribution of the debtor's property: namely, rates and taxes, and wages or salary of any clerk or servant, or of any labourer or workman, not exceeding £50, in respect of services during four months before the receiving order (*l*); provided that where any labourer in husbandry has entered into any contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or of a part thereof, as the Court may decide to be due under the contract proportionate to the time of service, up to the date of the receiving order (*m*).

In the case of bankrupt partners the applicability of Partners.

(*h*) 46 & 47 Vict. c. 52, s. 37 (4)—(7).

(*i*) S. 38. The "mutual dealings" must result in pecuniary liabilities: *Eberle's Hotel Co. v. Jonas*, L. R. 18 Q. B. D. 459.

(*k*) *In re Gillespies, Ex parte Reid*, L. R. 14 Q. B. D. 963.

(*l*) 46 & 47 Vict. c. 52, s. 40 (1), (2).

(*m*) 49 & 50 Vict. c. 28, s. 3.

Chap. XII. the joint estate and separate estates respectively in payment of debts is thus defined by the Bankruptcy Act (*n*):—

S. 40 (3.) “In the case of partners, the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.”

And further:—

S. 59 (1.) “Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2.) “Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.”

Loans by
wife.

In the case of loans by a wife to her husband for the purpose of his trade or business, she can only claim a dividend after all claims of the other creditors have been satisfied, and it will be inferred that her loans were for such purpose unless she

(*n*) 46 & 47 Vict. c. 52, ss. 40 (3), 59 (1), (2).

prove the contrary (*o*). It is enacted by the Married Chap. XII.
Women's Property Act, 1882 (*p*):—

S. 3. "Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him, or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied."

The power of a landlord or other person to whom rent is Landlord.
due to distrain for rent upon the goods or effects of the bankrupt, after commencement of the bankruptcy, is limited to one year's rent prior to the order of adjudication (*q*).

The mode of proving debts, the right of proof by secured Proof.
and other creditors, the admission and rejection of proofs, are regulated by the second schedule to the Act (*r*).

A secured creditor may (1) realise his security and prove Secured
creditors.
for the balance due to him (*s*), or (2) surrender the security and prove for the whole debt (*t*), or (3) assess the security and prove for the balance (*u*), or (4) rely upon the security alone (*v*), in which case he will be excluded from any dividend on the distribution of the estate (*w*). The creditor may require the trustee to elect whether he will or will not redeem the security by payment of the assessed value or require it to be realised (*x*). If the petitioning creditor is

(*o*) *In re Gencse, Ex parte District Bank of London*, L. R. 16 Q. B. D. 700.

(*p*) 45 & 46 Vict. c. 75, s. 3: this section applies only where the husband is a sole trader, *In re Tuff, Ex parte Nottingham*, W. N. (1887), 80. Compare 28 & 29 Vict. c. 86, s. 5, *ante*, p. 7.

(*q*) 46 & 47 Vict. c. 52, s. 42. See M. L. R. P. 216, 371.

(*r*) 46 & 47 Vict. c. 52, s. 39.

(*s*) Sched. II. r. 9.

(*t*) R. 10.

(*u*) R. 11.

(*v*) S. 9 (2).

(*w*) Sched. II. r. 16.

(*x*) R. 12. See also Sched. I. r. 12.

Chap. XII. a secured creditor he must in his petition either state that he is willing to give up his security, or give an estimate of its value; in the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt (*y*).

Execution
creditors.

A secured creditor is defined to be a person holding a mortgage, charge, or lien (*z*); but where a creditor has issued execution against the goods of, or attached a debt due to, the debtor, he may not retain the benefit unless the execution is completed by seizure and sale (*a*), or the attachment by receipt of the debt (*b*), before the receiving order, and before notice of presentation of a petition or of the commission of an act of bankruptcy (*c*). Also the title of the Official Receiver or trustee will prevail against the sheriff where the debtor's goods have been taken in execution, but before sale notice has been served upon him of a receiving order, subject, however, to a charge upon the goods for the costs of execution (*d*). And where a debtor's goods have been sold under an execution in respect of a judgment for a sum exceeding 20*l.*, the sheriff must retain the net proceeds for fourteen days, and if during that time notice is served on him of a petition having been presented and the debtor is adjudged bankrupt thereon, or on any other petition of which the sheriff has notice, he must pay them over to the trustee (*e*). But the person who purchases the goods of a debtor in good faith under a sale by

(*y*) 46 & 47 Vict. c. 52, s. 6 (2). See *Ex parte Taylor, In re Lacey*, L. R. 13 Q. B. D. 128.

(*z*) 46 & 47 Vict. c. 52, s. 168 (1).

(*a*) See *In re Hutchinson*, L. R. 16 Q. B. D. 515. See also *In re Hobson*, 33 Ch. D. 493.

(*b*) See *Butler v. Wearing*, L. R. 17

Q. B. D. 182.

(*c*) 46 & 47 Vict. c. 52, s. 45.

(*d*) S. 46 (1).

(*e*) S. 46 (2). See *In re Pearce, Ex parte Crossthwaite*, L. R. 14 Q. B. D. 966; *Ex parte Warren, In re Holland*, 15 Q. B. D. 48.

the sheriff in all cases acquires a good title against the trustee in bankruptcy (*f*). Chap. XII.

The bankruptcy of a debtor is deemed to have relation back to, and commence at, the time of the act of bankruptcy being committed on which a receiving order is made; or, if he have committed more acts of bankruptcy than one, then the first of them committed within three months next before the presentation of the petition will be the commencement of the bankruptcy (*g*). Commence-
ment of
bankruptcy.

We have seen that upon adjudication the property of the bankrupt vests in the trustee and becomes divisible among his creditors (*h*). It includes all such as may belong to or be vested in him at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge (*i*); and also the capacity to exercise, and to take proceedings for exercising, all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice (*k*). And the trustee is empowered to exercise such powers (*l*). It has been held that the above provisions do not empower the trustee to exercise such a power after the bankrupt's death, inasmuch as the power then comes to an end and no longer exists (*m*); nor do they include a general power of appointment by deed or will of which a married woman who has been adjudicated bankrupt is the donee, her own Property
divisible.

(*f*) 46 & 47 Vict. c. 52, s. 46 (3).
See s. 4 (*e*).

(*g*) S. 43. See s. 6 (*c*); *Ex parte Moss, In re Toward*, L. R. 14 Q. B. D. 310.

(*h*) 46 & 47 Vict. c. 52, s. 20 (1),
ante, p. 244.

(*i*) S. 44 (i).

(*k*) S. 44 (ii.). See M. L. R. P. 321; and, as to powers generally, ch. xi.

(*l*) 46 & 47 Vict. c. 52, s. 56 (4).

(*m*) *Nichols to Nixey*, L. R. 29 Ch. D. 1005, *sed qu.*

Chap. XII. power not being included in 'separate property' under the Married Women's Property Act, 1882 (*n*); but by that Act it is enacted, that the execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities in the same manner as her separate estate is made liable under the Act (*o*).

Property is defined by the Act (*p*) as including

"Money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere; also, obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined."

But the property divisible among a bankrupt's creditors does not include the tools of his trade, or the necessary wearing apparel and bedding of himself, his wife and children, to a value inclusive not exceeding 20*l.* (*q*). Nor does it include property held by him on trust for any other person (*r*); but it does include the following, namely:—

"All goods being at the commencement of the bankruptcy in the possession (*s*), order, or disposition of the bankrupt, in his trade or business (*t*), by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or

In reputed
ownership of
bankrupt.

(*n*) *Ex parte Gilchrist, In re Armstrong*, L. R. 17 Q. B. D. 521; 45 & 46 Vict. c. 75, s. 1, § 5.

(*o*) S. 4. See M. L. R. P. 322.

(*p*) 46 & 47 Vict. c. 52, s. 168 (1).

(*q*) S. 44 (2).

(*r*) S. 44 (1).

(*s*) See *Ex parte Symmons, In re Jordan*, L. R. 14 Ch. D. 693.

(*t*) See *Ex parte Lovering, In re Murrell*, L. R. 24 Ch. D. 31; *In re Wallis, Ex parte Sully*, 14 Q. B. D. 950; *In re Jenkinson*, 15 Q. B. D. 441; and *Rolls v. Miller*, 27 Ch. D. 85.

business, shall not be deemed goods within the meaning of this section" (u). Chap. XII.

Shares in an incorporated company transferable by deed are 'things in action' within the above proviso (x). The above clause, commonly called the 'order and disposition' or 'reputed ownership' clause, was introduced into the bankruptcy law to prevent traders from gaining a delusive credit by a false appearance of substance calculated to mislead those who should deal with them; the true owner is made to lose his property for having allowed his credit to be given (y). The principle is that goods belonging to a third party are not within the clause, "unless they were left with the bankrupt in such circumstances that, as reputed owner, he could have sold them, or otherwise obtained credit upon them, in the course of his trade or business" (z). Said L. Selborne, L.C. (a):—

"The doctrine of reputed ownership does not require any investigation into the actual state of knowledge or belief, either of all creditors, or of particular creditors and still less of the outside world, who are no creditors at all, as to the position of particular goods. It is enough for the doctrine if those goods are in such a situation as to convey to the minds of those who know their situation the reputation of ownership, that reputation arising by the legitimate exercise of reason and judgment on the knowledge of those facts which are capable of being generally known to those who choose to make inquiry on the subject. It is not at all

(u) 46 & 47 Vict. c. 52, s. 44 (iii.).

(x) *Colonial Bank v. Whinney*, L. R. 11 Ap. Ca. 426. And see *In re Jenkinson*, 15 Q. B. D. 441.

(y) See *per* Lord Hardwicke, L.C., in *Ryall v. Rowles*, 1 Ves. sen. 371; *per* Jessel, M.R., in *Ex parte Wingfield*, *In re Florence*, L. R. 10 Ch. D. 593; and see its general history, *per* Lord

Fitzgerald in Colonial Bank v. Whinney, L. R. 11 Ap. Ca. 442.

(z) *Per* Lord Watson in *Colonial Bank v. Whinney*, L. R. 11 Ap. Ca. 440.

(a) *Ex parte Watkins*, *In re Couston*, L. R. 8 Ch. Ap. 528; and see *per* Lord Blackburn in *Colonial Bank v. Whinney*, L. R. 11 Ap. Ca. 436.

Chap. XII. necessary to examine into the degree of actual knowledge which is possessed, but the Court must judge from the situation of the goods what inference as to the ownership might be legitimately drawn by those who knew the facts. I do not mean the facts that are only known to the parties dealing with the goods, but such facts as are capable of being, and naturally would be, the subject of general knowledge to those who take any means to inform themselves on the subject. So, on the other hand, it is not at all necessary, in order to exclude the doctrine of reputed ownership, to show that every creditor, or any particular creditor, or the outside world who are not creditors, knew anything whatever about particular goods, one way or the other. It is quite enough in my judgment, if the situation of the goods was such as to exclude all legitimate ground from which those who knew anything about that situation could infer the ownership to be in the person having actual possession."

And again (b) :—

"When the existence of a custom notorious in a particular trade or business is proved, the effect of which is that every one who knows the custom knows that articles to which it is applicable, and which are in the place in which the trade or business is carried on, may or may not be the property of the person who is carrying on the trade or business—may or may not be held by him for other persons—then the doctrine of reputed ownership is absolutely excluded as to all the articles which are within the scope of the custom."

Therefore it was held that wine bought and paid for, and left according to custom in the warehouse of the vendors, who became bankrupt, was not within the clause, and did not pass to the trustee (c). Also that the established custom of hotel-keepers to hire the furniture of their hotels, which includes all articles necessary for the furnishing of an

(b) *Ex parte Turquand, In re Parker*,
L. R. 14 Q. B. D. 643.

(c) *Ex parte Watkins, In re Couston*,
L. R. 8 Ch. Ap. 520.

hotel for the purpose of using it as an hotel, excludes such articles from the operation of the clause, whether they are or are not in fact hired (*d*). Chap. XII.

The rights of a registered mortgagee of a British ship, or of a share in one, are protected by the Merchant Shipping Act, 1854 (*e*), whereby it is enacted:— 17 & 18 Vict.
c. 104, s. 72.

S. 72. "No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition and be reputed owner of such ship or share thereof; and such mortgage shall be preferred to any right, claim or interest in such ship or any share thereof which may belong to the assignees of such bankrupt."

Where the bankrupt is an officer of the Army or Navy, or an officer or clerk or otherwise employed or engaged in the Civil Service of the Crown, the Court may order a portion of his pay or salary to be paid to the trustee for distribution among his creditors (*f*); and where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or to any compensation granted by the Treasury, the Court may make such order as it thinks just for the payment of it, or any part of it, to the trustee to be applied as the Court shall direct (*g*).

Not only is a bankrupt's property within the meaning of that expression as above explained, available for distribution among his creditors, but also his settled property may be Voluntary settlements.

(*d*) *Ex parte Turquand, In re Parker*,
L. R. 14 Q. B. D. 636.

(*e*) 17 & 18 Vict. c. 104, s. 72.

(*f*) 46 & 47 Vict. c. 52, s. 53 (1).

(*g*) S. 53 (2). Not 'compassionate allowance': *Ex parte Webber*, L. R. 18 Q. B. D. 111. See *Lucas v. Harris*, *ib.* 127. See *ante*, p. 95.

Chap. XII. so, that is to say, if it be the subject of a voluntary settlement, and this, contrary to the former rule, is without reference to his being a trader or not. By the Bankruptcy Act (*h*) it is enacted that any settlement (that is, any conveyance or transfer of property, not (1) being a settlement made before and in consideration of marriage; or (2) made in favour of a purchaser or incumbrancer, in good faith and for valuable consideration; or (3) a settlement made, on or for the wife or children of the settlor, of property which has accrued to the settlor after marriage in right of his wife,) shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void as against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof. Further it is enacted that (*i*):—

“ Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor’s wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.”

(*h*) 46 & 47 Vict. c. 52, s. 47 (1), (3).
See *In re Player, Ex parte Harvey*,
L. R. 15 Q. B. D. 682; *Ex parte*

Mercer, In re Wise, 17 Q. B. D. 290.
(*i*) 46 & 47 Vict. c. 52, s. 47 (2).

But a policy of assurance effected by a man upon his own life and expressed to be for the benefit of his wife and children is not a voluntary settlement within the Bankruptcy Act (*k*). Nor is the ordinary covenant to pay a sum of money to the trustees of a marriage settlement within the Act (*l*); to be so it must be a covenant or contract to settle some specific money or property, *e.g.*, a covenant that, in case any property was left to the covenantor by his father or any other person, he would settle it, and the covenantor had no interest in it at the time (*m*).

Also an old statute of the reign of Elizabeth (*n*) avoids as against creditors all gifts, alienations, conveyances, &c., of (lands) goods and chattels made with intent to hinder, delay, or defraud them. This applies to any debtor, whether bankrupt or not, and in the case of a bankrupt, whether the voluntary settlement was within or outside the period of ten years. But the statute does not extend to any interest on good consideration and *bonâ fide* lawfully conveyed to any person, not having notice of such covin (*o*). An ordinary marriage settlement made prior to marriage, or after marriage in pursuance of articles, is not within it or the Bankruptcy Act (*p*).

Many questions have arisen under the statute of Elizabeth; it was at first held that the conveyance of goods was not *bonâ fide*, although for good consideration, if the

(*k*) 46 & 47 Vict. c. 52, s. 152; and see Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11.

(*l*) *Ex parte Bishop*, L. R. 8 Ch. Ap. 718.

(*m*) *Ib. per* James and Mellish, L.JJ.

(*n*) 13 Eliz. c. 5 (made perpetual by 29 Eliz. c. 5). See also 46 & 47 Vict. c. 52, s. 4 (1) (*b*), *ante*, p. 240.

(*o*) This statute is given in the notes to *Twyne's case*, 1 Sm. L. Ca. 12. See *Ex parte Chaplin, In re Sinclair*, L. R. 26 Ch. D. 336, *per* Fry, L.J. And see M. L. R. P. 111 *et seq.*, as to 13 Eliz. c. 5, and 27 Eliz. c. 4 (as to lands).

(*p*) 46 & 47 Vict. c. 52, s. 47. See the Author's "Exposition of the New Law of Bankruptcy," 56 *et seq.*

Chap. XII. debtor was allowed to remain in possession; but now the question of *bona fides*, where there has been no change of possession, is regarded as a question of fact in each case (*q*). It has also been decided that the mere fact of a settlement being voluntary is not enough to render it void against creditors; but there must, for instance, be unpaid debts which were existing at the time of making the settlement, and the settlor must have been at the time, not necessarily insolvent, but so largely indebted as to induce the Court to believe that the intention of the settlement, taking the whole transaction together, was to defraud the creditors (*r*).

Further, it has been held that a conveyance is not fraudulent and void, either under the statute or at common law, merely because it is intended to defeat the expected execution of a particular creditor, provided that it was for valuable consideration and *bond fide*—i.e., that it was the intention of both parties to buy and sell in reality (*s*); and, in case the debtor is adjudged bankrupt within three months from the date of the conveyance, provided also that the conveyance took place before the receiving order, and that the person to whom it was made had not at the time notice of any available act of bankruptcy committed by the bankrupt before that time (*t*).

And, apart from any statutory provision, the general policy of the law, while it allows a stranger to convey an

(*q*) See *Twyne's case*, 1 Sm. L. Ca. 1, and notes.

(*r*) See *Holmes v. Penney*, 3 K. & J. 90, as to then creditors; and see *Jenkyn v. Vaughan*, 3 Dr. 419; and *Ex parte Mercer*, *In re Wise*, L. R. 17 Q. B. D. 290, as to subsequent creditors; and see *In re Pearson*, *Ex parte Stephens*,

L. R. 3 Ch. D. 807, where there were no unpaid debts or insolvent circumstances, but the object was plainly to defeat future creditors.

(*s*) *Wood v. Dixie*, 7 Q. B. 892. See 46 & 47 Vict. c. 52, s. 49.

(*t*) S. 49.

interest in property for the benefit of another terminable by that person's bankruptcy, or on his aliening or charging it (*u*), as in the case of property coming from the wife on marriage, renders invalid against the trustee in bankruptcy a similar settlement of property belonging to the party himself (*x*), that is, so far as the curtailment of his life interest is concerned (*y*). Chap. XII.

Besides avoiding in certain circumstances voluntary settlements as above explained, the bankruptcy law also avoids payments, conveyances, or transfers of property, or charges thereon, by a debtor made, as it is termed, by way of 'fraudulent preference'; that is, made to give a preference to a particular creditor or class of creditors, which, the policy of the law being an equal distribution of the debtor's property among all creditors, is treated as fraudulent. Before the Bankruptcy Act of 1869 (*z*) the Courts considered such payments and transfers of property to be frauds upon the bankruptcy law, although not forbidden by express enactment (*a*). Fraudulent preference.

It will be remembered that to make such conveyance, transfer, or charge, is an act of bankruptcy upon which a bankruptcy petition may be presented (*b*). The provision of the Bankruptcy Act, 1883 (*c*), avoiding preferences, is as follows :—

(*u*) *Brandon v. Robinson*, 18 Ves. 429. See form 3 Da. ii. 798; 2 Prid. 273.

(*x*) 3 Da. i. 134 *et seq.*; and 2 Prid. 212. This does not prevent a person settling his own property so as to take an interest defeasible on alienation.

(*y*) *Higinbotham v. Holme*, 19 Ves. 87; or in the case of a voluntary settlement, fraudulent within the sta-

tute of Elizabeth (13 Eliz. c. 5), invalid *in toto*, see *In re Pearson*, L. R. 3 Ch. D. 807.

(*z*) 32 & 33 Vict. c. 71, s. 92.

(*a*) See the Author's "Exposition of the New Law of Bankruptcy," 58 *ct seq.*

(*b*) *Ante*, p. 240; 46 & 47 Vict. c. 52, s. 4 (1) (*c*).

(*c*) S. 48 (1).

Chap. XII.

S. 48 (1). "Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same, is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy."

The Court in determining whether a payment or transfer of property is fraudulent within the above provision must consider what, as a question of fact, was the real dominant motive of the debtor; and, if it come to the conclusion that it was (*e.g.*) to save himself from exposure or a criminal prosecution, it must hold that, notwithstanding the payee or transferee was in fact preferred, there was not a fraudulent preference (*d*). Also the payment or transfer must be by a debtor to a creditor or to somebody in trust for a creditor; therefore the voluntary making good by the debtor of trust money which he has misapplied is not a fraudulent preference; the relation of debtor and creditor does not exist between a trustee and his co-trustee, or between a trustee and his *cestui que trust* (*e*). And the above section is not to "affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt," that is, a transferee of the creditor (*f*). Further, for the

(*d*) *Ex parte Taylor, In re Goldsmid*, L. R. 18 Q. B. D. 295. See *Ex parte Hill, In re Bird*, 23 Ch. D. 704, 705, per Bowen, L.J.

(*e*) *Ex parte Stubbins, In re Wilkin-*

son, L. R. 17 Ch. D. 58; *Ex parte Taylor, In re Goldsmid*, 18 Q. B. D. 295; *Ex parte Ball, In re Hutchinson*, W. N. (1887), 21.

(*f*) 46 & 47 Vict. c. 52, s. 48 (2);

Chap. XII.

protection of a payment or transfer to a creditor, not only must it not have been made with a view of preferring, but it must have been made before the receiving order, and the creditor must have had no notice of any available act of bankruptcy committed before the payment (*g*); otherwise if the debtor is adjudged a bankrupt on a petition presented within three months from the date of payment, such payment will not prevail against the trustee (*h*). The doctrine of fraudulent preference is not to be taken advantage of for the purpose of benefiting a single creditor, but only for the benefit of the whole body of creditors (*i*).

As already indicated, in addition to the ordinary procedure by petition upon an act of bankruptcy, there is given by the Bankruptcy Act power to the Court to make a receiving order against a debtor upon an application by a judgment creditor for his committal (*k*); and through its registrar to administer his estate where judgment has been obtained against a debtor in a County Court and he is unable to pay the amount forthwith, and he alleges that his whole indebtedness amounts to less than £50 (*l*).

Receiving
order against
judgment
debtors.

Also the Court is empowered to administer in bankruptcy the estates of persons dying insolvent, on the petition of a creditor whose debt would have been sufficient to support a bankruptcy petition (*m*). An order for administration in such case is not to be made until after two months from the grant of probate or letters of administration, unless

Debtor dying
insolvent.

contrary to the old law under the Act of 1869 (32 & 33 Vict. c. 71), s. 92. See *Butcher v. Stead*, L. R. 7 E. & I. Ap. 846; and the Author's "Exposition of the New Law of Bankruptcy," 58—61.

(*g*) 46 & 47 Vict. c. 52, s. 49.

(*h*) Ss. 48, 49. See G. R. (1886), 6 (*e*).

(*i*) *Willmott v. London Celluloid Co.*, L. R. 34 Ch. D. 147, following *Ex parte Cooper*, *In re Zucco*, L. R. 10 Ch. Ap. 510.

(*k*) 46 & 47 Vict. c. 52, s. 103 (5), *ante*, p. 243.

(*l*) S. 122, *ante*, p. 243.

(*m*) S. 125, *ante*, p. 244.

Chap. XII. with the concurrence of the legal personal representative, or unless the petitioning creditor proves that the deceased committed an act of bankruptcy within three months before his decease (*n*). If a debtor by or against whom a petition has been presented dies, the proceedings, unless the Court otherwise orders, are to be continued as if he were alive (*o*).

Bankruptcy
of a trustee.

In the case of a trustee becoming bankrupt and it being expedient to appoint another trustee in his place, for instance, where he has trust money to receive or deal with so that he can misappropriate it, and whether a trustee solely or jointly with others (*p*), the Bankruptcy Act empowers the Court having jurisdiction under the Trustee Act, 1850 (*q*), that is, the Chancery Division of the High Court (*r*), or where the trust estate does not exceed in amount or value the sum of £500 (*s*) a County Court, to remove such bankrupt trustee and appoint another in his stead (*t*).

II. Corpora-
tions.
Companies.

It is expressly enacted by the Bankruptcy Act (*u*) that a receiving order shall not be made against any corporation, or against any partnership, association, or company, registered under the Companies Act, 1862 (*x*).

As regards a corporation, Blackstone says (*y*) :—

“The debts of a corporation, either to or from it, are totally extinguished by its dissolution; so that the members thereof cannot recover, or be charged with them, in their natural capacities; agreeable to that maxim of the civil law, ‘*si quid universitati debetur, singulis non debetur; nec, quod debet universitas, singuli debent.*’”

(*n*) 46 & 47 Vict. c. 52, s. 125 (3).

(*o*) S. 108.

(*p*) *In re Barker's Trusts*, L. R. 1 Ch. D. 43; *In re Adam's Trust*, 12 Ch. D. 634.

(*q*) 13 & 14 Vict. c. 60.

(*r*) Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 34.

(*s*) County Courts Act, 1865 (28 & 29 Vict. c. 99), s. 1, § 5.

(*t*) 46 & 47 Vict. c. 52, s. 147. See *Coombes v. Brookes*, L. R. 12 Eq. 61.

(*u*) 46 & 47 Vict. c. 52, s. 123.

(*x*) 25 & 26 Vict. c. 89.

(*y*) Vol. i. 484.

A corporation may be dissolved, (1) by Act of parliament; (2) by the natural death of all its members, in case of an aggregate corporation; (3) by surrender of its franchises; (4) by forfeiture of its charter (*z*). Also by the loss of such an integral part of its members as is necessary, according to its character, to the validity of the corporate elections (*a*).

Chap. XII.

Dissolution of corporation.

We have seen under what circumstances a company can be wound up under the Companies Acts (*b*). Among the circumstances under which one may be wound up by the Court is the inability to pay its debts (*c*).

Winding-up of company.

Any application to the Court for winding-up must be by petition, which may be presented by the company, or by one or more creditor or creditors, contributory or contributories of the company (*d*). But no contributory may present a petition unless the members are reduced to less than seven, or unless his shares or some of them either were originally allotted to him, or have been held by him and registered in his name, for at least six months during the previous eighteen months, or have devolved upon him through the death of a former holder (*e*).

Petition.

A company is deemed unable to pay its debts (*f*)—

(1). “Whenever a creditor, by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such

(*z*) Bl. vol. i. 484.

and see s. 199 (3) (*b*).

(*a*) 3 St. Bl. 30. But as to municipal corporations, see 45 & 46 Vict. c. 50, s. 70 (2).

(*d*) S. 82.

(*e*) 30 & 31 Vict. c. 131, s. 40.

(*b*) *Ante*, pp. 177 *et seq.*

(*f*) 25 & 26 Vict. c. 89, s. 80. See s. 199 (4).

(*c*) 25 & 26 Vict. c. 89, s. 79 (4);

Chap. XII.

sum, or to secure or compound for the same to the reasonable satisfaction of the creditor :

(2.) "Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part :

(3.) "Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made :

(4.) "Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts."

A creditor unable to obtain payment of his debt is in general entitled *ex debito justitiæ* to an order for winding-up by the Court (*g*).

Contributory. A 'contributory' is a person liable to contribute to the assets of the company in the event of its being wound up (*h*), that is to say, as defined by the Act (*i*) :—

"Every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves with the qualifications following (that is to say) :

(1.) "No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up :

(2.) "No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member :

(*g*) *Bowes v. Hope Life Insurance Co.*, 11 H. of L. Ca. 389. See *In re United Stock Exchange Co.*, W. N. (1884), 251.

(*h*) 25 & 26 Vict. c. 89, s. 74. See ss. 74—78.

(*i*) S. 38. See ss. 196, 209 ; and *Ramsay's case*, L. R. 3 Ch. D. 388.

(3.) "No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act :

(4.) "In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member :

(5.) "In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association."

After making an order for winding-up the Court settles a list of contributories (*k*). This is divided into two parts, namely, the A. list and the B. list. The former comprises the members of the company at the commencement of the winding-up, that is, at the time of the presentation of the petition (*l*), which is settled as soon as may be ; the latter comprises the past members who have ceased to be members within a year before its commencement, and is settled after it appears that the present members are unable to satisfy the debts (*m*).

The provision of the Married Women's Property Act, 1882, that a woman after marriage shall continue liable in respect of her debts, contracts, &c., before marriage, expressly includes any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories (*n*) ; and in like manner, so far as a husband is liable to his wife's debts, &c., contracted before marriage, his liability will extend to such sums (*o*).

Married
women.

(*k*) 25 & 26 Vict. c. 89, s. 98.

(*l*) S. 84.

(*m*) See notes to s. 38 in Buckley's Companies Acts.

(*n*) 45 & 46 Vict. c. 75, s. 13, *post*, p. 282.

(*o*) S. 14, *post*, p. 283.

Chap. XII.

Rules of
bankruptcy.

By the Judicature Act, 1875 (*p*), it is provided that in the winding-up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding-up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of any such company, may come in under the winding-up of such company, and make such claims against the same as they may respectively be entitled to by virtue of the Judicature Act.

The above enactment was for the purpose of getting rid of the old rule in equity as to proof by a secured creditor (*q*); it does not apply, for instance, the rules of bankruptcy relating to order and disposition (*r*).

By the Companies Act, 1862, any attachment, sequestration, distress, or execution, put in force against the estate or effects of the company after the commencement of the winding-up, will be void (*s*), except with the leave of the Court, and subject to such terms as the Court may impose (*t*); and any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property, as

(*p*) 38 & 39 Vict. c. 77, s. 10. See the Annual Practice, and *ante*, p. 232.

(*q*) See M. L. R. P. 116. Further, as to the effect of the section, see notes to Companies Act, 1862, s. 158, by Mr. Buckley.

(*r*) *Gorringe v. Irwell India-Rubber, &c., Works*, L. R. 34 Ch. D. 128.

(*s*) 25 & 26 Vict. c. 89, s. 163.

(*t*) Ss. 85, 87. See *In re New City Constitutional Club Co.*, W. N. (1887), 26.

would, if made or done by or against any individual, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of his creditors, will, if made or done by or against any company, in like manner be invalid (*u*).

Chap. XII.

(*u*) 25 & 26 Vict. c. 89, s. 164. See *Willmott v. London Celluloid Co.*, L. R. 34 Ch. D. 147.

Chap. XIII.

CHAPTER XIII.

ENFORCEMENT OF DEBTS (*continued*).

I. Interest
on debts.
At law.

At law (and equity followed the law (*a*)) the rule was that interest was allowed only upon mercantile securities, or in those cases where there had been an express promise to pay interest, or where such promise was to be implied from the usage of trade or other circumstances (*b*). It applied to bills of exchange and promissory notes, and to debts for which the debtor had agreed to give a bill or note, but not to a covenant for the payment of monies under a policy of assurance after the death of the assured. Interest was also payable on money wrongfully, fraudulently, or vexatiously withheld and not paid on the day when it ought to have been paid (*c*).

By statute.

By the Law Amendment Act, 1833, it was enacted (*d*):—

S. 28. “ That upon all debts or sums certain, payable at a certain time or otherwise, the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand

(*a*) See *per* Thesiger, L.J., in *Webster v. British Empire Assurance Co.*, L. R. 15 Ch. D. 178, 179.

(*b*) *Per* Abbott, C.J., in *Higgins v. Sargent*, 2 B. & Cr. 349.

(*c*) Seton on Decrees, vol. ii. 798—800. And see *per* Lord Westbury in *Caledonian Rail. Co. v. Carmichael*, L. R. 2 Sc. Ap. 66.

(*d*) 3 & 4 Wm. IV. c. 42, ss. 28, 29.

shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law.” Chap. XIII.

And further :—

S. 29. “That the jury on the trial of any issue or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.”

It will be observed that a discretion is given to the jury to say whether, under all the circumstances of a case, it is one in which interest ought to be allowed or not : and a Judge of fact will act as a jury (*e*). Under the former section it is not necessary that the day for payment should be mentioned in the instrument, if a time or event be fixed the date of which can be ascertained afterwards (*f*).

We have seen that the liability of a person to contribute to the assets of a company being wound up under the Companies Acts creates a debt (*g*) ; therefore, a notice upon a contributory of a call made in winding up, requiring its payment by a given day and stating that if not paid by that day interest will be charged, will make interest to be payable on the call under the above statute (*h*).

(*e*) See *per* Hall, V.-C., in *Hill v. S. Staffordshire Rail. Co.*, L. R. 18 Eq. 170.

(*f*) *Duncombe v. Brighton Club & Norfolk Hotel Co.*, L. R. 10 Q. B. 371. As to what is not a ‘debt or sum payable,’ see *Hill v. S. Staffordshire*

Rail. Co., 18 Eq. 170 : what is not a sufficient demand, see *Ward v. Eyre*, 15 Ch. D. 130.

(*g*) *Ante*, p. 264. See 25 & 26 Vict. c. 89, s. 75.

(*h*) *Barrow’s case*, L. R. 3 Ch. Ap. 784.

Chap. XIII.

The statutory provision as to payment of interest by way of damages where a bill of exchange is dishonoured has been previously noticed (*i*).

Compound interest cannot be claimed, except under a contract express or implied from the mode of dealing with former accounts or from custom (*j*).

Under the Rules of the Supreme Court, interest runs upon the amount for which the judgment or order is passed with costs, at the rate of £4 per cent. per annum (*k*). Under 1 & 2 Vict. c. 110, s. 7, every judgment debt carries interest at that rate from the time of entering up the judgment (*kk*).

Adopting the principle of the statute, 3 & 4 Wm. IV. c. 42, s. 28, the following provision has been introduced into the bankruptcy law as to the right of proof by a creditor for interest upon his debt (*l*) :—

“On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per cent. per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.”

It is further provided that if there is any surplus after

(*i*) *Ante*, p. 125. See 45 & 46 Vict. c. 61, s. 57 (1).

(*j*) *Fergusson v. Fyffe*, 8 C. & F. 121. As to the case of an accounting party employing the money (*e.g.* of his principal) in business, see *Burdick v. Garrick*, L. R. 5 Ch. Ap. 233; *In re Bell*, 34 Ch. D. 462.

(*k*) R. S. C. Ord. XLII. r. 16; Ord.

LV. rr. 62, 63; *Pyman v. Burt*, W. N. (1884), 100. And see County Court Rules, 1886, Ord. LI. r. 13.

(*kk*) This applies also to County Court judgments: *The Queen v. County Court Judge of Essex*, L. R. 18 Q. B. D. 638.

(*l*) 46 & 47 Vict. c. 52, Sched. II. r. 20. And see s. 39.

payment of debts proved, including such interest, it is to be applied in payment of interest from the date of the receiving order at the rate of £4 per cent. per annum on all debts proved in the bankruptcy (m). Chap. XIII.

In the winding-up of a company by, or under the supervision of, the Court, creditors whose debts carry interest are entitled to dividends only upon what was due for principal and interest at the date of the winding-up; and it is only in the event of there being a surplus that they have any claim for subsequent interest; and in that case the dividends will be treated as applicable, first, in payment of interest, and then in reduction of principal (n). Upon debts in respect of which interest would have been recoverable under the above statute (3 & 4 Wm. IV. c. 42, s. 28), interest to the same date is payable in the winding-up (o). A resolution to wind up voluntarily will not stop interest from running; but, where it is followed by an order to wind up under the supervision of the Court, interest will stop at the date of the resolution to wind up voluntarily (p).

In winding-up
of company.

Although a man's property is generally liable to his debts, the enforcement of them must be within the period prescribed by statute. That period, as regards simple contract debts, is limited to six years from the cause of action, by the Statute of Limitations, 21 Jac. I. c. 16; as regards specialty debts, to twenty years from the cause of action, by the Law Amendment Act, 1833 (q). In the former case the further period allowed in case of the party entitled to sue being under disability or the debtor being beyond

II. Statutes of
limitation.

(m) 46 & 47 Vict. c. 52, s. 40 (5).

Assurance Co.'s case, 2 H. & M. 722.

(n) See notes to Companies Act, 1862, s. 158, by Mr. Buckley.

(p) See Buckley's Companies Acts, 331.

(o) *State Fire Insurance Co.*; *Times*

(q) 3 & 4 Wm. IV. c. 42, s. 3.

Chap. XIII. seas when the cause of action accrues, is regulated also by the statutes 4 Anne, c. 16, and the Mercantile Law Amendment Act, 1856 (*r*); also the right to sue may be revived to the creditor by certain acts of the debtor notwithstanding the lapse of time, under the provisions of Lord Tenterden's Act (*s*), amended by the Mercantile Law Amendment Act, 1856 (*t*); and by the latter statute are regulated actions on accounts between merchants, which were excepted from the statute of James.

By the statute of James it is enacted (*u*):—

(*a*) Simple
contract
debts.

21 Jac. I.
c. 16, s. 3.

S. 3. "That all actions of account, and upon the case (*x*) (other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants), all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent, shall be commenced and sued within six years next after the cause of such actions or suit, and not after."

Merchants'
accounts.
19 & 20 Vict.
c. 97, s. 9.

And by the Mercantile Law Amendment Act, 1856, it is enacted (*y*):—

S. 9. "All actions of account or for not accounting, and suits for such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the cause of such actions or suits, or when such cause has already arisen then within six years after the passing of this Act; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having

(*r*) 19 & 20 Vict. c. 97.

(*s*) 9 Geo. IV. c. 14.

(*t*) 19 & 20 Vict. c. 97.

(*u*) 21 Jac. I. c. 16, s. 3.

(*x*) As to such actions, see notes to *Ashby v. White*, 1 Sm. L. Ca. 297, or

Broom's Commentaries.

(*y*) 19 & 20 Vict. c. 97, s. 9. See *Knox v. Gye*, L. R. 5 E. & I. 673, *per* Lord Westbury: read 'comprised in' as 'that would have been comprehended in.'

arisen within six years next before the commencement of Chap. XIII.
such action or suit."

These statutes have been acted upon in Courts of equity, Law—equity.
as well as in Courts of law, either directly or by way of
analogy. As explained by Lord Westbury (z):—

"Where the remedy in equity is correspondent to the remedy at law, and the latter is subject to a limit in point of time by the Statute of Limitations, a Court of equity acts by analogy to the statute, and imposes on the remedy it affords the same limitation. This is the meaning of the common phrase, that a Court of equity acts by analogy to the Statute of Limitations, the meaning being, that where the suit in equity corresponds with an action at law which is included in the words of the statute, a Court of equity adopts the enactment of the statute as its own rule of procedure. But if any proceeding in equity be included within the words of the statute, there a Court of equity, like a Court of law, acts in obedience to the statute."

The disability of a party to sue in respect of a simple Disabilities.
contract debt was extended under the statute of James, not only to minors, married women, and lunatics, but also to parties imprisoned or beyond seas; the latter were deprived of the further period allowed under that statute by the Mercantile Law Amendment Act, 1856 (a). So the enactment in the earlier statute should now be read thus (b):—

S. 7. "If any person or persons that is or shall be entitled to any such . . . actions of accounts, actions of debts, . . . be or shall be, at the time of any such cause of action given or accrued, fallen or come within the age of twenty-one years, *feme covert, non compos mentis* . . . then such person or persons shall be at liberty

(z) *Knox v. Gye*, L. R. 5 E. & I. (1887), 69.
Ap. 674. See recent instance, *In re Hastings, Hallett v. Hastings*, W. N. (a) 19 & 20 Vict. c. 97, s. 10.
(b) 21 Jac. I. c. 16, s. 7.

Chap. XIII.

to bring the same actions, so as they take the same within such times as are before limited, after their coming to or being of full age, discover, of sane memory . . . as other persons having no such impediment should have done."

And the statute has been further modified by the Married Women's Property Act, 1882, which, as we have seen, enacts that (c):—

S. 1 (2.) "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property (*d*) on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise."

It is also enacted by that Act that every woman, whether married before or after the commencement of the Act (January 1st, 1883) shall have in her own name, against all persons whomsoever, including her husband, the same civil remedies and also the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a *feme sole*; and a husband or wife shall be competent to give evidence against each other; provided that no criminal proceeding shall be taken against her husband while they are living together, nor while they are living apart as to or

(c) 45 & 46 Vict. c. 75, s. 1 (2),
ante, p. 44.

(d) *i.e.* not subject to restraint upon

anticipation: *Draycott v. Harrison*,
L. R. 17 Q. B. D. 147.

concerning any act done by the husband while they were living together, unless the property claimed by her shall have been wrongfully taken by him, when leaving or deserting or about to leave or desert her (*e*). Chap. XIII.

The disability must have existed when the cause of action arose: it is a settled rule that where the time has once begun to run, no subsequent disability, however involuntary, will suspend the operation of the statute (*f*).

The period was also extended, by the statute of Anne, in the case of the debtor being beyond seas, that is, being outside of the United Kingdom of Great Britain and Ireland, or the Islands of Man, Guernsey, Jersey, Alderney and Sark, or any island adjacent being part of the dominions of the Crown (*g*). By the statute of Anne it is enacted that persons entitled to their causes of action by the statute of James shall be at liberty, if the person against whom the cause of suit or action exists "be or shall be at the time of such cause of suit or action given or accrued fallen or come beyond the seas," to bring the said action against such person after his return from beyond the seas; so as they take the same after his return from beyond the seas within the time limited by the statute of James (*h*). Debtor
beyond seas.

In certain circumstances, for instance, if judgment for the plaintiff were reversed by error, or if the defendant be outlawed and afterwards reverse the outlawry, the statute of James (*i*) provided that in such cases the plaintiff, "his heirs, executors, or administrators as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed," &c. Proceed- Action by
or against
executor or
administrator.

(*e*) 45 & 46 Vict. c. 75, s. 12.

(*h*) 4 Anne, c. 16 (in statutes revised,

(*f*) See *per* Lord Denman, C.J., 4 & 5 Anne, c. 3), s. 19.

Homfray v. Scroope, 13 Q. B. 512.

(*i*) 21 Jac. I. c. 16, s. 4.

(*g*) 19 & 20 Vict. c. 97, s. 12.

Chap. XIII. ing upon the equity of the section, the Court extended it to the case of an executor, whose testator had died pending an action brought by him, such case being within the mischief, though not within the words of the section (*k*); and similarly, the rule was that where an action was commenced within the period of limitation and the defendant died, then the plaintiff had a right to bring a new action against the executor or administrator if he did so in a reasonable time (*l*). And this is still the rule, although the cause or matter does not become abated by the death of any of the parties (*m*).

Joint debtors. And where the cause of action lies against two or more joint debtors, it is enacted by the Mercantile Law Amendment Act, 1856 (*n*), that:—

S. 11. "The person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas, and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond seas at the time the cause of action or suit accrued after his or their return from beyond seas, by reason only that judgment was already recovered against any one or more of such joint debtors who was not or were not beyond seas at the time aforesaid."

Accrual of
cause of
action—
ignorance—
fraud.

Time will begin to run, in the case of the debtor beyond

(*k*) *Per* Lord Denman, C.J., *Adam v. Inhabitants of Bristol*, 2 Ad. & El. 404.

(*l*) *Per* Lord Esher, M.R., *Swindell*

v. Bulkeley, L. R. 18 Q. B. D. 253.

(*m*) *S. C.*; and see *R. S. C. Ord. XVII.*

(*n*) 19 & 20 Vict. c. 97, s. 11.

seas, from his return, although the creditor be unaware of his return (*o*), on the principle that the statute runs against a creditor's claim, although he is not aware of the accrual of his cause of action. And, on the same principle, at law the statute will run notwithstanding the fraudulent concealment of the cause of action (*p*); but in equity the right of a party defrauded is not affected by lapse of time, or, generally speaking, by anything done or omitted to be done, so long as he remains without any fault of his own in ignorance of the fraud that has been committed (*q*).

The effect of the Statute of Limitations being to bar the remedy not to extinguish the debt (*r*), a debtor may by a new promise to pay revive his liability and give a new cause of action (*s*). Such promise may be express, or implied from an acknowledgment of the debt or by payment of any principal or interest. Prior to Lord Tenterden's Act (9 Geo. IV. c. 14) a verbal promise or acknowledgment was sufficient; but by that Act, after reciting that various questions had arisen in actions founded on simple contracts as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the Statute, it is enacted (*t*):—

New promise to pay—
acknowledgment—part payment.

S. 1. "That in actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments or either of them, or to

(*o*) *Gregory v. Hurrill*, 5 B. & Cr. 341.

(*p*) *Imperial Gas Light & Coke Co. v. London Gas Light Co.*, 10 Ex. 39.

(*q*) *Rolfe v. Gregory*, 13 W. R. 356, per Lord Westbury, L.C. As regards and and rent, see M. L. R. P. 393.

(*r*) Contrary to the statutes affecting real property. See M. L. R. P. 398.

(*s*) See per Lord Tenterden, C.J., in *Tanner v. Smart*, 2 B. & Cr. 606.

(*t*) 9 Geo. IV. c. 14, s. 1.

Chap. XIII.

deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; and that where there shall be two or more joint contractors, or executors, or administrators of any contractor, no such joint contractor, executor, or administrator, shall lose the benefit of the said enactments or either of them, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principle or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff . . . as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff."

And by the Mercantile Law Amendment Act, 1856 (*u*), it is further enacted that :—

S. 13. "An acknowledgment or promise made or contained by or in a writing signed by an agent of the party chargeable thereby, duly authorised to make such acknowledgment or promise, shall have the same effect as if such writing had been signed by such party himself."

The effect of Lord Tenterden's Act (*x*), which did not make any alteration in the legal construction to be put upon promises or acknowledgments, but merely required a

(*u*) 19 & 20 Vict. c. 97, s. 13.

(*x*) 9 Geo. IV. c. 14, s. 1.

different mode of proof (*y*), was thus stated by Mellish, Chap. XIII.
L.J. (*z*) :—

“ There must be a proof of some writing signed by himself, either containing an express promise to pay the debt, or being in terms from which an unconditional promise to pay it is necessarily to be implied. If, therefore, the writer, although he admits the existence of a debt, refuses to pay it, or reserves the matter for future consideration, or refers the creditor to some third person for payment, or the like, this will not be sufficient to prevent the operation of the statute. That being the rule, there must be one of these three things to take the case out of the statute. Either there must be an acknowledgment of the debt, from which a promise to pay is to be implied ; or, secondly, there must be an unconditional promise to pay the debt ; or, thirdly, there must be a conditional promise to pay the debt, and evidence that the condition has been performed.”

Similarly for a payment of interest or part payment of capital to take the debt out of the Statute of Limitations, it must take place under such circumstances that a promise to pay may be inferred in fact, not merely implied in law ; thus, a payment of interest after judgment in an action for the same, would not be a payment from which a promise to pay the principal could in fact be inferred (*a*). The exception from Lord Tenterden's Act of payment of any capital or interest was made for the reasons thus expressed by Parke, B. (*b*) :—

“ The meaning of *part payment* of the principal, is not the naked fact of payment of a sum of money, but payment of a smaller *on account of a greater sum*, due from the person making

(*y*) *Per* Tindal, C.J., in *Haydon v. Williams*, 7 Bing. 166. 474.

(*z*) *In re River Steamer Co., Mitchell's Claim*, L. R. 6 Ch. Ap. 828. See *Green v. Humphreys*, L. R. 26 Ch. D.

(*a*) *Morgan v. Rowlands*, L. R. 7 Q. B. 493.

(*b*) *Waters v. Tompkins*, 2 C. M. & R. 726.

Chap. XIII. the payment to him to whom it is made; which part payment implies an admission of such greater sum being then due, and a promise to pay it: and the reason why the effect of such a payment is not lessened by the act, is that it is not a *mere* acknowledgment by words, but it is coupled with a fact. The same observation applies to the payment of interest."

Appropriation of payments.

Where there are two or more debts owing by the debtor to the same creditor and some are barred by the statute, the appropriation by the creditor, without the direction of the debtor, of any general payment to the satisfaction of these (which, the remedy only being barred, he could make), will not be such a part payment by the debtor to take others, or other items if they are in a running account, out of the statute; it were otherwise if the debtor so appropriated the payment. The law as to the appropriation of any payment to a particular debt or item is that the debtor may, in the first instance, appropriate the payment—*solvitur in modum solventis*; if he omit to do so, the creditor may make the appropriation—*recipitur in modum recipientis*; but if neither make any appropriation, the law appropriates the payment to the earlier debt: and the creditor may make the appropriation at any time before action (*c*).

Retainer by executor or administrator.

Another instance of the effect of the Statute of Limitations being only to bar the remedy, not the debt, is to be found in the right of retainer by an executor as against a general legatee of a debt by him to the testator barred by the statute, or by an administrator of a debt by one of the next of kin as against his share in the estate of the deceased (*d*).

(*c*) See *Mills v. Fowkes*, 5 Bing. N. C. 455; *Clayton's case*, 1 Mer. 585, and Tudor's L. Mar. Ca. 1; *In re Sherry, London & County Banking Co.*

v. Terry, L. R. 25 Ch. D. 692, 702.

(*d*) *In re Cordwell's Estate*, L. R. 20 Eq. 644. See Theobald on Wills, 117.

By the Act for the Amendment of the Law, 1833 (3 & 4 **Chap. XIII.** Will. IV. c. 42), it is enacted that actions of debt for rent upon an indenture of demise (*e*), or of covenant or debt upon any bond or other specialty, must be commenced within twenty years after the cause of action (*f*); or in case of persons under disability (that is to say, of a minor, *feme covert* (*g*), or *non compos mentis* (*h*)) at the time of cause of action accruing, within twenty years from such disability ceasing (*i*). Provision, similar to the law in respect of simple contract debts, was made that the debtor's liability should be revived for a fresh period of twenty years by any acknowledgment signed by the party liable or his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon (*k*).

(b) Actions on specialties.
3 & 4 Wm. IV. c. 42, ss. 3—5.

The above statute applies to monies payable by any member to a company under the Companies Act, 1862, including the liability of any person to contribute to the assets in the event of the company being wound up, such debts being declared to be of the nature of a specialty (*l*), and, therefore, binding upon the member's heirs (*m*).

Where a party intends to set up the defence to an action that it is barred by lapse of time, he must give notice of such defence upon his pleading (*n*). But it is optional with the party to plead the statute or not; if he do not,

Pleading or setting up the statute.

(*e*) See M. L. R. P. 379.

(*f*) 3 & 4 Wm. IV. c. 42, s. 3.

(*g*) The provisions of the Married Women's Property Act, 1882, enabling a *feme covert* to be sued, has been referred to *ante*, p. 274.

(*h*) Being in prison was not a disability under this statute. The disability of being beyond seas was done away by 19 & 20 Vict. c. 97, s. 10;

ante, p. 273.

(*i*) 3 & 4 Wm. IV. c. 42, s. 4.

(*k*) S. 5.

(*l*) 25 & 26 Vict. c. 89, ss. 16, 75.

(*m*) See *Overend, Gurney & Co., Ex parte Lintott*, L. R. 4 Eq. 184.

(*n*) R. S. C. Ord. XIX. r. 15; in County Courts, 9 & 10 Vict. c. 95, s. 76, and R. C. C. Ord. X. r. 14.

Chap. XIII. the law treats the debt as an existing obligation and lends the process of the Court to enforce its discharge. Similarly an executor or administrator has the same option as the debtor would have had if alive; and an executor or administrator may retain out of the assets of a deceased debtor a debt due to himself although the right of action is barred (*o*).

When statute
ceases to run.

The statute ceases to run against the claim of a creditor upon adjudication in bankruptcy of the debtor, or the creation by him of a trust for creditors, or, after his decease, a decree for the administration of his estate, and in like manner upon an order for the winding-up of a company (*p*).

III. Ante-
nuptial debts
of married
woman.

We have seen the present capacity of a married woman to contract, and to sue and be sued (*q*) under the Married Women's Property Act, 1882. To the provisions of that Act already quoted should be added the following sections defining the liability of a married woman's separate property, and of the husband to the extent of property acquired through his wife, in respect of debts and liabilities contracted by the wife prior to marriage (*r*):—

Wife's ante-
nuptial
debts and
liabilities.

S. 13. "A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage, including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories,

(*o*) See *per* Wilde, J., in *Coombs v. Coombs*, L. R. 1 Pr. & D. 289. And see *Alston v. Trollope*, 2 Eq. 205; and *Lewis v. Rumney*, 4 Eq. 451.

(*p*) See *per* Mellish, L.J., in *re General Rolling Stock Co., Joint Stock Discount Co.'s Claim*, L. R. 7 Ch. Ap.

649. But see R. S. C. Ord. LV. r. 57, and Bankruptcy Rules, 1886, 227—231.

(*q*) *Ante*, pp. 44, 274.

(*r*) 45 & 46 Vict. c. 75, ss. 13—15, 19. See *ante*, p. 47.

under and by virtue of the Acts relating to joint stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property: and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof: Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong, as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

S. 14. "A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs, for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid.

Chap. XIII.

Suits for
ante-
nuptial
liabilities.

S. 15. "A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong), contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone, it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

Saving of
settle-
ments.

S. 19. . . . "No restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage, and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors" (s).

(s) See *In re Grey's Settlements*; 712; *In re Whitaker*, 34 Ch. D. 227.
Acason v. Greenwood, L. R. 34 Ch. D. 227.

CHAPTER XIV.

Chap. XIV.

DEVOLUTION OF PERSONAL PROPERTY ON DEATH OF OWNER.

PERSONAL property, including chattels real (*a*), and rents and annuities, dividends, and other periodical payments in the nature of income and now apportionable like interest on money lent (*b*), devolves on the death of the owner, not like real property upon the heir, but upon his personal representative, that is to say, if under his will, his executor, otherwise his administrator; such right of representation in the one case being authenticated, in the other granted, by the Court.

Personal
representa-
tive.

But what has been given by the deceased in contemplation of death, called a *donatio mortis causâ*, will not go to his personal representative, but becomes the absolute property of the donee. It is said such gift must be (1) with a view to the donor's death, and (2) conditioned to take effect only on the death of the donor by his existing disorder, and (3) there must be a delivery of the subject of it (*c*).

*Donatio
mortis causâ.*

Also unlike the owner of lands, who had no power of disposition by will direct prior to the Statute of Wills in A.D. 1540 (*d*), the owner of personalty could from time immemorial dispose of it by testament. Says Blackstone (*e*):—

History of
wills of
personalty.

(*a*) See M. L. R. P. 145.

(*b*) See Apportionment Act, 1870 (33 & 34 Vict. c. 35); M. L. R. P. 47.

(*c*) Williams on Executors, pt. II. bk. ii. ch. ii. § iv.; *Ward v. Turner*, and notes, 1 Wh. & T. L. Ca. in Eq.

1058. See as to gift of a cheque, *Clement v. Cheesman*, L. R. 27 Ch. D. 631.

(*d*) 32 Hen. VIII. c. 1. See M. L. R. P. 331.

(*e*) Bl. vol. ii. 491.

Chap. XIV. “With us in England this power of bequeathing is co-eval with the first rudiments of the law; for we have no traces or memorials of any time when it did not exist.”

Such power, however, did not extend originally to all a man's personal estate. On the contrary, Blackstone tells us (*f*):—

“By the common law as it stood in the reign of Henry the Second, a man's goods were to be divided into three equal parts; of which one went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children; and so *e converso*, if he had no children, the wife was entitled to one moiety, and he might bequeath the other; but if he died without either wife or issue, the whole was at his own disposal. The shares of the wife and children were called their reasonable parts.”

Then by Magna Charta (*g*) it was provided that the King's debts should first of all be levied, and after that the residue of the goods should go to the executor to perform the will of the deceased. It was not until 1724 that throughout the kingdom the power of disposing of all their personal estate was universally possessed by owners, when such power was conferred last of all within the district of London (*h*).

I. Intestacy—
administra-
tion.

In the case of a person dying intestate as to his goods or any part of them, by the old law the King was entitled to seize upon the same as the *parens patriæ* and general trustee of the kingdom (*i*). Afterwards the Crown, in favour of the Church, invested the prelates with this branch of the prerogative. Thus the goods of intestates

(*f*) Bl. vol. ii. 492.

(*h*) 11 Geo. I. c. 18.

(*g*) 9 Hen. III. c. 18 (in statutes revised, 25 Edw. I.).

(*i*) Bl. vol. ii. 494.

were given to the Ordinary, that is to say, the bishop of the diocese, he being the ordinary ecclesiastical judge (*k*), whose interest and powers were only those of being the King's almoner within his diocese. Blackstone adds (*l*) :—

Chap. XIV.

“In trust to distribute the intestate's goods in charity to the poor, or in such superstitious uses as the mistaken zeal of the times had denominated pious.”

And further, with reference to the jurisdiction acquired by the Ordinary in respect of wills, he adds (*m*) :—

“As he (the Ordinary) had thus the disposition of intestate's effects, the probate of wills of course followed : for it was thought just and natural, that the will of the deceased should be proved to the satisfaction of the prelate whose right for distributing his chattels for the good of his soul was effectually superseded thereby.”

But questions arose as to which Ecclesiastical Court the will of a deceased was to be proved in, or administration be granted by, when he had effects of such an amount as to be considered notable goods, *bona notabilia*, that is, of the value of 5*l.* and upwards, within some other diocese than that in which he died. The general rule was that the will must be proved before or administration be granted by the metropolitan of the province, by way of special prerogative; hence their Courts were called the Prerogative Courts of Canterbury and York (*n*).

By the Statute of Westminster 2nd (*o*) it was enacted that the Ordinary should be bound to pay the debts of the intestate so far as his goods would extend, in the same

Statutes of
administra-
tion.

(*k*) Williams on Executors, pt. I. bk. iv. ch. i. § 1.

(*l*) Bl. vol. ii. 494.

(*m*) *Ib.*

(*n*) Williams on Executors, pt. I. bk. iv. ch. i. § 1.

(*o*) 13 Edw. I. c. 19.

Chap. XIV. manner that executors were bound in case the deceased had left a will. It was not till A.D. 1357, that it became the law, being so provided by statute (p), that the Ordinary was to appoint "of the nearest and most lawful friends" of the deceased intestate to administer his goods, who were interpreted to be the next of blood under no legal disabilities; and such administrators were put upon the same footing, with regard to suits and to accounting, as executors appointed by will (q). Then the statute 21 Hen. VIII. c. 5 authorised the grant of administration in case of intestacy, or where the executors named in the will refused to prove, either to the widow, or the next of kin, or to both; and where two or more persons should be in the same degree of kindred to whichever the Ordinary should please (r). The above statutes are commonly called the Statutes of Administration.

Probate
Court.

The jurisdiction of the Ecclesiastical (and all other) Courts, in relation to the grant and revocation of probates of wills and letters of administration was taken away by Act of Parliament in 1857 (s), and transferred to the thereby constituted Probate Court, so that such jurisdiction should be exercised by one Court only and in the name of Her Majesty. It was, however, provided that the practice of the Court, except where otherwise provided by the Act or by Rules or Orders to be made under it, should be, so far as the circumstances of the case would admit, according to the practice in the Prerogative Court (t).

High Court.

Then by the Judicature Act, 1873 (u), the jurisdiction

(p) 31 Edw. III. c. 11.

(q) Bl. vol. ii. 496.

(r) *Ib.* *i.e.* next of kin at time of the intestate's death, not of the grant : Williams on Executors, pt. I. bk. v.

ch. ii. § 1, p. 443.

(s) 20 & 21 Vict. c. 77; amended 21 & 22 Vict. c. 95.

(t) 20 & 21 Vict. c. 77, s. 29.

(u) 36 & 37 Vict. c. 66, s. 16.

of the Court of Probate was transferred to the High Court Chap. XIV. of Justice, as on the 1st day of November, 1875 (*x*); and the Probate, Divorce and Admiralty Division was made one of the Divisions of the High Court (*y*); to it were assigned all pending causes and matters, and all causes and matters which would have been within the exclusive cognizance of the Court of Probate if the Act had not passed (*z*). By the Judicature Act, 1875 (*a*), it was enacted that all Rules and Orders of Court in force at the commencement of the Act in the Court of Probate should remain and be in force until altered or cancelled by any subsequent Rules of Court; and that the President of the Probate and Divorce Division should have the power of making Rules and Orders for regulating procedure (*b*).

The interest and power of the executor were always derived from the will itself; the probate by the Court, that is, the grant on proof of the will of a copy thereof certified under the seal of the Court, being the authentication thereof (*c*). But the administrator derives his authority from the Court itself by grant of letters of administration (*d*).

Power of executor or administrator whence derived.

Under the Wills Act (*e*) all the personal estate of the testator which he shall be entitled to at law or in equity at the time of his death, and which if left to be disposed of by the law would devolve upon his executor or administrator, may be bequeathed or disposed of by his will, including contingent, executory, or other future interests; and notwithstanding that he may become entitled to the same subsequently to the execution of his will (*f*).

II. Disposition by will. (1 Vict. c. 26.)

(*x*) 38 & 39 Vict. c. 77, s. 2.

(*y*) 36 & 37 Vict. c. 66, s. 31.

(*z*) *Ib.*

(*a*) 38 & 39 Vict. c. 77, s. 18.

(*b*) See 20 & 21 Vict. c. 77, s. 30.

(*c*) Williams on Executors, p. 297, and pt. I. bk. iv. c. i. § 2.

(*d*) *Ib.* pt. I. bk. v. c. i. § 2.

(*e*) 1 Vict. c. 26.

(*f*) See M. L. R. P. 333; 1 Vict.

Chap. XIV.

The same formalities are requisite in a will of personalty as in one of realty, and the same persons are competent to make a will (*g*); and in like manner it speaks from the death of the testator (*h*). It is liable during the testator's lifetime to revocation by the same means; and the same rules prevail as regards obliteration, interlineation, or alteration of the writing thereof, and as regards the revival of a will once revoked (*i*). In like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, includes personalty over which he has a general power of appointment, unless a contrary intention appear by the will (*k*). Also in a bequest of personal estate words importing a failure of issue of any person are to be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appear (*l*).

Similarly there is the same exception to a gift failing or 'lapsing' by reason of the object of gift dying before the testator, where such person is a child or other issue of the testator, and there is issue of him living at the testator's death; then if the interest bequeathed to him by the will is

c. 26, ss. 3, 24. This will include property settled in trust for A. (testator) for life, and after for his executors or administrators: *Mackenzie v. Mackenzie*, 3 McN. & G. 559.

(*g*) See M. L. R. P. 332—336; also see pp. 330, 331, as to 'bequest' &c., and codicils; 1 Vict. c. 26, ss. 7—9, 14—17, 24, and 25; 15 & 16 Vict. c. 24. And see Married Women's Property Act (45 & 46 Vict. c. 75), ss. 1, 2, 5, and 19, *ante*, pp. 44 *et seq.* and 284. As to execution, see *Margary v. Robinson*, L. R. 12 Prob. D. 8; and

as to attesting witness, see *Clark v. Randall*, 31 Ch. D. 72.

(*h*) See M. L. R. P. 338; 1 Vict. c. 26, s. 24.

(*i*) See M. L. R. P. 339—342; 1 Vict. c. 26, ss. 18—23.

(*k*) See M. L. R. P. 337; 1 Vict. c. 26, s. 33; and *per* Jessel, M.R., in *Pickersgill v. Rodger*, L. R. 5 Ch. D. 172. See also *Airey v. Bower*, 12 Ap. C'a. 263.

(*l*) See M. L. R. P. 353, 354; 1 Vict. c. 26, s. 29. As to wills generally, see Flood's Wills of Personalty.

not determinable at or before his death, the same will take effect as if his death had happened immediately after that of the testator, unless a contrary intention appear (*m*). Chap. XIV.

It will be remembered that by the Married Women's Property Act, 1882 (*n*), it has been enacted that a married woman shall, in accordance with the provisions of that Act, be capable of (*inter alia*) disposing by will of any property as her separate property (*o*) in the same manner as if she were a *feme sole* (*p*); that every woman married after 1882 shall be entitled so to dispose of all property which shall belong to her at marriage, or be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property gained or acquired by her in any employment, trade, or occupation in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill (*q*); that every woman married before 1883 shall be entitled so to dispose of all property, her title to which, whether vested or contingent, and whether in possession, reversion or remainder, shall accrue after 1882, including any wages, earnings, money, and property so gained or acquired by her (*r*); but that such power of disposition is subject to any settlement made respecting her property before or after marriage (*s*).

It has been decided that the will of a married woman made under the power given by the above Act must be made after the commencement of the Act, and that, if the

(*m*) See M. L. R. P. 337; 1 Vict. c. 26, s. 33; *per* Jessel, M.R., in *Pickersgill v. Rodger*, L. R. 5 Ch. D. 172.

(*n*) 45 & 46 Vict. c. 75.

(*o*) As to what is 'separate property,' see M. L. R. P. 119 *et seq.*, and *ante*, p. 43.

(*p*) 45 & 46 Vict. c. 75, s. 1 (1).

(*q*) 45 & 46 Vict. c. 75, s. 2.

(*r*) S. 5.

(*s*) S. 19. This includes covenants to settle property acquired after marriage. See *In re Whitaker*, L. R. 34 Ch. D. 227.

Chap. XIV. will be made before January 1st, 1883, when the Act came into operation (t), it must be construed in accordance with the law at that time (u); also that such power extends only to property of which she was possessed while under coverture, and therefore her will made during coverture to be effectual must be re-executed to dispose of property acquired after the coverture has come to an end (x); and that if a woman married before 1883 has before that year acquired a title, whether vested or contingent, to any property, such property by falling into possession after 1882 does not become her separate property within the Act (y).

III. Husband's interest in wife's property.

Before the above Act, except in the case of a will under a power given to a married woman, for instance, by settlement on marriage in respect of property settled to her separate use, she could not make a will without the license of her husband; for all her personal chattels were absolutely his, and he might dispose of her chattels real in her lifetime or have them to himself if he survived her, and although if she survived she was entitled to her choses in action not reduced into possession by him in his lifetime, if he survived he was entitled. Such licence or assent on the part of the husband was but a waiver of his rights as her administrator (z); and to the administration of her personal estate he had the exclusive right, which was acknowledged and confirmed by the Statute of Frauds (a), by reason of a doubt as to the effect of the Statute of Distributions (b). To be entitled to her choses in action the husband must

(t) 45 & 46 Vict. c. 75, s. 25.

(u) *In re March, Mander v. Harris*, L. R. 27 Ch. D. 166.

(x) *In re Price, Stafford v. Stafford*, L. R. 28 Ch. D. 709, *sed qu.* See note by Messrs. Wolstenholme & Turner, Conveyancing Acts, 154.

(y) *Reid v. Reid*, L. R. 31 Ch. D. 402.

(z) Williams on Executors, pt. I. bk. ii. ch. i. § ii.; and pt. II. bk. iii. ch. i. § iii.

(a) 29 Car. II. c. 3, s. 24.

(b) 22 & 23 Car. II. c. 10.

have taken out letters of administration, but to her chattels real he was entitled *jure mariti* (c). If he should die before obtaining a grant, or before reducing into possession all her property in action, administration must be taken out to the wife generally, or *de bonis non*, according to the circumstances; and the administration would be granted to the representatives of the husband, unless it were shown that the next of kin of the wife were entitled to the beneficial interest, upon the principle that the grant ought to follow the interest (d).

Chap. XIV.

The law as it formerly stood between husband and wife with regard to her personal chattels, including ‘paraphernalia,’ was thus expressed by Blackstone (e):—

“As to chattels personal (or choses) in possession, which the wife hath in her own right, as ready money, jewels, household goods, and the like, the husband hath therein an immediate and absolute property, devolved to him by the marriage, not only potentially but in fact, which never can again revest in the wife or her representative.

“And, as the husband may thus, generally, acquire a property in all the personal substance of the wife, so in one particular instance the wife may acquire a property in some of her husband’s goods; which shall remain to her after his death, and shall not go to his executors. These are called her paraphernalia; which is a term borrowed from the civil law, and is derived from the Greek language, signifying something over and above her dower. Our law uses it to signify the apparel and ornaments of the wife, suitable to her rank and degree; which she becomes entitled to at the death of her husband over and above her jointure or dower, and preferably to all other representatives: and the jewels of a peeress usually worn by her, have been held to be paraphernalia. Neither can the husband devise by his will such ornaments and jewels of his wife; though during his life, perhaps, he hath the

(c) *In re Bellamy, Elder v. Pearson*, L. R. 25 Ch. D. 620. bk. v. ch. ii. § 1; and pt. III. bk. iv. ch. i. § 1.

(d) *Williams on Executors*, pt. I. (e) *Bl.* vol. ii. 435, 436.

Chap. XIV. power (if unkindly inclined to exert it) to sell them or give them away. But if she continues in the use of them till his death, he shall afterwards retain them against his executors and administrators, and all other persons, except creditors where there is a deficiency of assets. And her necessary apparel is protected even against the claim of creditors."

Paraphernalia.

It was held by Lord Hardwicke (in 1746) that diamonds given to the wife by the husband's father, on her marriage, were to be considered as a gift to her separate use, entitling her to them in her own right; and similarly a gift of jewels by a stranger to her during the coverture, or by her husband, unless he expressly gave them to be worn as ornaments of her person only; and also that, if the husband pledged his wife's paraphernalia and left on his death a sufficient estate to redeem the pledge, she was entitled to have them redeemed out of his personal estate (*f*).

Reversionary interests.

As regards the wife's choses in action, the husband could not alienate them in his wife's lifetime, by reason of her interest in the event of her surviving him without his having reduced them into possession; nor could they together do so, for an assignment by a married woman was wholly inoperative. But by Malins' Act, in 1857 (*g*), power was given to the wife to deal with such of her choses in action as were future or reversionary interests, whether vested or contingent. It enabled her with the concurrence of her husband (*h*) to dispose of such interests by deed acknowledged agreeably to the Fines and Recoveries Act (*i*), where she became entitled under any instrument

(*f*) *Graham v. Lord Londonderry*, 3 Atk. 393.

(*g*) 20 & 21 Vict. c. 57. See 2 Da. i. 223 *et seq.*

(*h*) As to cases in which the Court may dispense with the husband's concurrence, *e.g.* where lunatic, living

apart, &c., see 3 & 4 Wm. IV. c. 74, s. 91.

(*i*) 3 & 4 Wm. IV. c. 74, ss. 77, 79, 80; Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 7. See M. L. R. P. 119.

Chap. XIV.

made after Dec. 31st, 1857 (except a settlement or agreement for settlement made on the occasion of marriage), unless by such instrument she was restrained from alienating or affecting the same. In like manner she was empowered to release or extinguish any power in regard to the same, as effectually as if she were a *feme sole*, and to release and extinguish her right or equity to a settlement out of any personal estate to which she or her husband in her right might be entitled in possession under any such instrument.

The wife's 'right or equity to a settlement' spoken of was her right to a provision by way of settlement out of her own property recognised by Courts of Equity in mitigation of the common law, and first enforced in cases where it was necessary for the husband or those claiming under him to apply to the Court for assistance in order to obtain possession of the property of the wife; upon the principle that he who seeks equity must do equity. The benefit of the settlement was extended also to the children; but, the equity being personal to the wife only, the children could not insist upon a settlement in the event of her death before asserting her right, and she could at any time before completion of the settlement waive her rights and thus defeat their interests. The proportion settled will be found to depend on circumstances, even the whole has been given; the right has been held to attach to a life interest as well as to an absolute one (*k*).

Equity to
settlement.

The law as it stood before the Married Women's Property Act, 1882 (*l*), still applies to cases to which the Act does not apply; and, although that Act makes the married

(*k*) *Taunton v. Morris*, L. R. 8 Ch. D. 453. And see generally on the subject, notes to *Murray v. Lord Eli-*

bank, Wh. & T. L. Ca. in Eq. vol. i. 507 *et seq.*

(*l*) 45 & 46 Vict. c. 75.

Chap. XIV. woman take as a *feme sole* and the husband can take nothing during the coverture, the statute 29 Car. II. c. 3, s. 24 (*m*) remains unrepealed, and thereby it is enacted that the Statute of Distributions (*n*)—

“ Shall not extend to the estates of *femes covert* that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same as they might have done before the making of the said Act.”

But as her chattels, both real and personal, acquired after 1882, no longer vest in the husband or can be assigned by him, and therefore he does not take them *jure mariti*, it would seem he must take out letters of administration on her death to complete his title to such as have not been disposed of by her (*o*). It is provided by the Married Women's Property Act, 1882, that for the purposes of such Act—

“ The legal personal representative of any married woman shall, in respect of her separate estate, have the same rights and liabilities, and be subject to the same jurisdiction as she would be if she were living” (*p*).

IV. Probate. A will of personalty (and of realty) is proved ordinarily in ‘common form’; but if there is any contention as to the grant of probate it is proved in ‘solemn form’; in the latter case the parties interested are cited. The application for probate may in all cases be made in the principal registry of the Court, and for probate in common form in the registry of the district where at the time of his death

(*m*) *Ante*, p. 292.

(*n*) 22 & 23 Car. II. c. 10. See *per* Messrs. Wolstenholme & Turner, Conveyancing Acts, p. 8.

(*o*) 22 & 23 Car. II. c. 10. See note *per* Wolstenholme & Turner, Conveyancing Acts, p. 9.

(*p*) 45 & 46 Vict. c. 75, s. 23.

the testator had a fixed place of abode (*q*). And where the personalty, without deducting debts, is under £200 and there is no realty of the value of £300 and upwards, the Judge of the County Court having jurisdiction at the place of abode of the deceased has also the contentious jurisdiction of the superior Court in respect of questions as to the grant and revocation of probate or of letters of administration, in case there be any contention in relation thereto (*r*). Chap. XIV.

The grant of probate to the will of a married woman, executed since 1882, will now be general, and not as formerly limited to "such property as testatrix had a right to dispose of" and to "such property as she has disposed of by her will;" for the Married Women's Property Act, 1882, has placed her in the position of a *feme sole* as far as her separate estate is concerned (*s*).

Formerly, it is said, the appointment by a testator of an executor for the execution of his will of personal estate was essential, but this strictness has long ceased to exist (*t*); where no executor is appointed or where an appointment fails, an administrator will be appointed by the Court with the will annexed to the grant—*cum testamento annexo*. In such case, where there is a residuary legatee under the will, he will be preferred to the next of kin and entitled to administration, on the ground that the right of administration should follow the right of property (*u*). An infant may be appointed executor, but if he is sole executor he is disqualified by statute of Geo. III. (*x*) until he have attained

Where no executor.

(*q*) 20 & 21 Vict. c. 77, ss. 46–48.
(*r*) 21 & 22 Vict. c. 95, s. 10. See also 20 & 21 Vict. c. 77, ss. 50, 55–60, and 21 & 22 Vict. c. 95, s. 12; and County Court Rules, 1886, Ord. XLIX.

(*s*) 45 & 46 Vict. c. 75; *In the goods of Amelia Price, deceased*, W. N. (1887), 76.

(*t*) Williams on Executors, pt. I. bk. i. ch. ii.

(*u*) Williams on Executors, pt. I. bk. i. ch. ii.; and pt. I. bk. v. c. iii. § 1, § 2. See *ante*, p. 293; and recent case *In the Goods of Maley*, L. R. 12 Pr. D. 134.

(*x*) 38 Geo. III. c. 87, s. 6.

Chap. XIV. twenty-one, and administration cum testamento annexo durante minore etate will be granted to his guardian or other fit person (*y*). In like manner it may be granted durante absentia when the executor is abroad, or pendente lite when an action has been commenced touching the validity of the will (*z*).

Married
woman
executrix.

A married woman may be appointed an executrix, but before the Married Women's Property Act, 1882 (*a*), she could not accept the office without her husband's consent. We have seen the power of a married woman under that Act to enter into a contract; it is further enacted that the word 'contract' in the Act—

"Shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration" (*b*).

Bankrupt
executor.

The grant of probate to a person nominated executor cannot be refused on the ground of his poverty or insolvency (*c*); but in the event of his bankruptcy a receiver of the estate will be appointed, and authority be given for the use of the executor's name, if necessary, in any action or proceeding (*d*).

V. Appoint-
ment of
executors.

The appointment of executor may be express, which it usually is, or constructive, for instance, where there is a

(*y*) Williams on Executors, pt. I. bk. iii. c. i.; and bk. v. c. iii. § 3.

(*z*) *Ib.* § 4, § 5; 20 & 21 Vict. c. 77, s. 70.

(*a*) 45 & 46 Vict. c. 75. See s. 1, *ante*, p. 44; and *In the Goods of Harriet Ayres*, L. R. 8 Prob. D. 168.

(*b*) 45 & 46 Vict. c. 75, s. 24; and see s. 18, *ante*, p. 98.

(*c*) Williams on Executors, pt. I. bk. iii. ch. i.

(*d*) *In re Hopkins, Dowd v. Hawtin*, L. R. 19 Ch. D. 61. The conduct of an action is not given to the receiver.

gift of all the estate after payment of debts for payment of legacies (e); in the latter case he is called executor 'according to the tenor.' He may be appointed solely or in conjunction with others; where there are more than one, they are all "in the eye of the law but as one man": the possession of one is esteemed the possession of all, payment of debts by or to one is esteemed payment by or to all, sale or gift of one of them the sale or gift of all, a release by or to one of them the release of all, and the assent of one of them to a legacy the assent of them all (f).

But by statute (g) the Bank of England may require all the executors who have proved to join and concur in any transfer of stock standing in the name of their testator. And all must be parties to an action (h). As regards the acts of his co-executor, an executor is protected by the following provision of Lord St. Leonards' Act, 1859, to amend the Law of Property and relieve Trustees (i):—

Every trust instrument to be deemed to contain clauses for the indemnity and reimbursement of the trustees.

S. 31. "Every deed, will, or other instrument creating a trust, either expressly or by implication shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following; that is to say, 'that the trustees or trustee for the time being of the said deed, will, or other instrument, shall be respectively chargeable only for such monies, stocks, funds, and securities, as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and

(e) *In the Goods of Bell*, L. R. 4 Prob. D. 85.

(f) *Sheppard's Touchstone*, 484: *Simpson v. Gutteridge*, 1 Madd. 616. And see *Williams on Executors*, pt. III. bk. i. c. ii.

(g) 8 & 9 Vict. c. 91.

(h) *Williams on Executors*, pt. III.

bk. i. c. ii.; and see *Latch v. Latch*, L. R. 10 Ch. Ap. 464; and R. S. C. Ord. LV. r. 5A (h).

(i) 22 & 23 Vict. c. 35, s. 31. And see *Townley v. Sherborne*, and *Brice v. Stokes*, and notes, Wh. & T. L. Ca. in Eq. vol. ii., 960, 967.

Chap. XIV.

not for those of each other, nor for any banker, broker, or other person with whom any trust monies or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument."

Surviving executors.

Where there are two or more executors, and one of them dies before administration of the deceased's estate is completed, the whole interest survives to the other or others.

Where a power is vested in two or more executors jointly, it is now provided by the Conveyancing and Law of Property Act, 1881, with regard to executorships after 31st Dec. 1881, as follows (*k*):—

S. 38 (1.) "Where a power or trust is given to or vested in two or more executors or trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being."

A sole executor, or sole surviving executor, can transmit his interest and power to his executor, for his power was founded upon the special confidence and actual appointment of the deceased; but an administrator, who is appointed by the Court, cannot so transmit his authority (*l*). Where the sole executor, or sole surviving executor, dies intestate, his interest is not transmissible to his own administrator;

(*k*) 45 & 46 Vict. c. 41, s. 38.

(*l*) Bl. vol. ii. 506; Williams on Executors, pt. I. bk. iii. ch. iv.

but there must be administration *de bonis non*, that is, of Chap. XIV.
the goods of the testator left unadministered (*m*).

Upon the principle already alluded to (*n*), that the interest and power of the executor are derived from the will itself, and that the property of the deceased vests in him from the moment of the testator's death, he may before probate do almost all the acts incident to his office, and the probate will relate back to the date of death; but if he, having acted, die before probate, letters of administration *cum testamento annexo* must be obtained, as in the case of omission to appoint an executor or failure in the appointment (*o*).

Power before
probate.

Anyone, not executor or administrator, intermeddling with the testator's property or exercising the office of executor will render himself liable as an executor of his own wrong, or technically as an executor *de son tort* (*p*); but, as stated in Williams on Executors (*q*):—

Executor
de son tort.

“There are many acts which a stranger may perform without incurring the hazard of being involved in such an executorship; such as locking up the goods for preservation, directing the funeral in a manner suitable to the estate which is left, and defraying the expenses of such funeral himself, or out of the deceased's effects, making an inventory of his property, feeding his cattle, repairing his houses, or providing necessaries for his children: for these are offices merely of kindness and charity.”

A person is not bound to accept the office of executor, Renunciation.
and, if he do not act, he may renounce probate. Such

(*m*) Williams on Executors, pt. I.
bk. v. ch. iii. § 2, *ante*, p. 293.

(*n*) *Ante*, p. 289.

(*o*) Williams on Executors, pt. I.
bk. iv. ch. i. § 2, *ante*, p. 297.

(*p*) Williams on Executors, pt. I.
bk. iii. ch. v.

(*q*) *Ib.* p. 265 (8th ed.). See *Kirk*
v. *Gregory*, L. R. 1 Ex. D. 55.

Chap. XIV. renunciation, however, is not effective until it has been recorded in the registry (*r*). But if he do administer and omit to take probate within six months, he is liable to a penalty of £100 and £10 per cent. on the duty (*s*). By the statute of Henry VIII. (*t*) the Ordinary might convene before him any person made and named executor of any testament to prove or refuse. Such power of citation was transferred by the Court of Probate Act (*u*). The effect of renunciation, without citation, is thus defined by such Act (*x*):—

S. 79. “Where any person, after the commencement of this Act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.”

And the effect of renunciation after citation is thus defined by the Court of Probate Act Amendment Act (*y*):—

S. 16. “Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.”

(*r*) *In the Goods of R. Morant*, L. R. p. 288.

3 Pr. & D. 151.

(*s*) 55 Geo. III. c. 184, s. 37.

(*t*) 21 Hen. VIII. c. 5, s. 8, *ante*,

(*u*) 20 & 21 Vict. c. 77, s. 23.

(*x*) S. 79.

(*y*) 21 & 22 Vict. c. 95, s. 16.

An executor having once proved the will cannot renounce the executorship (z). Chap. XIV.

The general rule is, that all goods and chattels, real and personal, of the deceased go to the executor (a). This rule does not similarly apply to choses in action which the deceased might have put in suit. With respect to such personal actions as are founded upon any obligation, contract, debt, covenant or other duty, the general rule has always been that the right of action on which the deceased might have sued in his lifetime survives to his executor or administrator; but it was a principle of the common law, that if an injury was done to the person or property of another, for which damages only could be recovered in satisfaction, the action died with the person to whom or by whom the wrong was done—*actio personalis moritur cum personâ* (b). An inroad was made upon this principle by a statute of Edw. III. (c), by an equitable construction of which an executor or administrator has the same actions for any injury done to the personal estate of the deceased in his lifetime, whereby it has become less beneficial to the executor or administrator, as the deceased himself might have had. It was not until 1833 that another statute, the Act for the Amendment of the Law, empowered executors or administrators to maintain an action for injuries to the real estate of the deceased committed in his lifetime; such injury must have been committed within six months before his death and the action must be brought within one year

What passes to executor—rights of action.

(z) As to liability of one who has proved but will not act, see Williams on Executors, pt. IV. bk. ii. ch. ii. § 2, p. 1839.

(a) Williams on Executors, pt. II. bk. ii. ch. i. § 1, and *ante*, p. 285.

(b) Williams on Executors, pt. II.

bk. iii. ch. i. § 1. See *Hatchard v. Mége*, W. N. (1887) 80.

(c) 4 Edw. III. c. 7. *De bonis asportatis in vitâ testatoris*: extended to executors of executors by 15 Edw. III. c. 5: see Williams on Executors, p. 797 (t).

Chap. XIV. after his death; the damages recovered form part of the personal estate (*d*). Then in 1846 was passed Lord Campbell's Act for compensating the families of persons killed in accidents, enabling the executor or administrator of the deceased, and failing such those beneficially interested, to maintain an action and recover damages by reason of the death wrongfully caused, for the benefit of the wife, husband, parent, or child of the deceased (*e*).

In the same way the general rule is with respect to such personal claims as are founded upon any obligation, contract, debt, covenant or other duty that the right of action on which the deceased might have been sued in his lifetime survives his death and is enforceable against his executor or administrator to the extent of the assets come to his hands (*f*); but with respect to the tortious acts of the deceased, the principle of *actio personalis moritur cum persona* applies, except the case fall within the Act of 1833 for the Amendment of the Law (*g*), which enabled actions to be brought against executors or administrators for an injury to property by the deceased, if committed within six months before his death, and provided the action be brought within six months after taking upon them the administration of his estate: the damages recovered in such action are to be payable in like order of administration as the simple contract debts (*h*).

Debts.

After payment of the funeral expenses, according to the degree and quality of the deceased, and the costs of proving

(*d*) 3 & 4 Wm. IV. c. 42, s. 2.

(*e*) 9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95. See "Railway Passengers," by the Author, 82—85.

(*f*) For instances, see County Court

Rules, 1886, Ord. XXX.

(*g*) 3 & 4 Wm. IV. c. 42, s. 2.

(*h*) Williams on Executors, pt. IV. bk. ii. ch. i.

the will, it is the executor's duty to pay the debts in due order (*i*). Chap. XIV.

Subject to what has been previously said (*k*), among creditors in equal degree the executor may pay one in preference to another (*l*). Similarly he may retain for his own debt due to him from the deceased in preference to all other creditors of equal degree (*m*). Thus the executor, being a simple contract creditor of the deceased, can, treating the assets as divided rateably among the specialty and simple contract creditors, retain his debt against the dividends payable to the simple contract creditors, to the extent of the assets actually come to his hands (*n*).

The rule is that the general personal estate of a testator is the primary fund for the payment of his debts, unless exempted by express words or manifest intent (*o*).

It is a general rule, subject however to many exceptions, that a legacy to a creditor equal to or exceeding his debt, shall be presumed, unless an intention to the contrary appear, to be meant by a testator as satisfaction of his debt (*p*). And similarly, but with fewer exceptions, that where a parent has come under obligation, *e.g.* by settlement, to provide portions for his children, and afterwards makes a provision by will for them, that shall *prima facie* be presumed to be a satisfaction of the obligation (*q*). But in case of a legacy by a creditor to his debtor there must

VI. Legacies
—legacy to
creditor—
portions to
children.

(*i*) See *ante*, p. 231; and as to distribution of assets after notices to creditors, see 22 & 23 Vict. c. 35, s. 29. See also ss. 27, 28, as to making provision for rents, covenants, &c.

(*k*) See *ante*, p. 231.

(*l*) Williams on Executors, pt. III. bk. ii. ch. ii. § 5.

(*m*) *Ib.* § 6.

(*n*) *In re Jones, Calver v. Laxton*,

L. R. 31 Ch. D. 440, *ante*, p. 231.

(*o*) *Duke of Ancaster v. Mayer* (and notes), Wh. & T. L. Ca. in Eq. vol. i. 723.

(*p*) Williams on Executors, pt. III. bk. iii. ch. ii. § 8.

(*q*) *Ib.* See *Ex parte Pye* (and notes), Wh. & T. L. Ca. in Eq. vol. ii. 364; and *Blandy v. Whitmore*, *ib.* 428. Theobald on Wills, ch. xlvii.

Chap. XIV. be clear evidence of the intention to release the debt (*r*): on the other hand, where the legatee is indebted to the testator the executor may retain the legacy by way of set-off (*s*). At law, the appointment of a debtor to be executor extinguished the debt, for a debt is a right to recover the amount by action, and an executor cannot sue himself; but equity makes the executor accountable for the full amount of his debt as assets, upon the supposition that it has been paid by the executor to himself and become assets in his hands (*t*).

Executor's
consent.

After payment of the debts of the testator it is the executor's duty to pay the legacies given by his will: the bequest is said (*u*) to transfer an inchoate property to the legatee, but the legacy is not perfect without the consent of the executor, in whom all the personal estate of the testator is vested, and it is his business first of all to see whether there is a sufficient fund left to pay the debts.

To a charity.

A gift by a testator to a superstitious use is void whether of realty or personalty; but a gift of personalty to a charitable use, being for a public benefit, is valid, as was also a gift of realty before the Mortmain Act (*x*).

General
bequest—
specific
bequest.

A legacy may be either 'general' or 'specific.' It is 'specific' when it is a bequest of a *specified* part of the testator's personal estate which is so distinguished (*y*). The following definition was given by Jessel, M.R. (*z*):—

(*r*) Williams on Executors, pt. III. bk. iii. ch. ii. § 9.

(*s*) *Ib.*; and see *ante*, p. 305.

(*t*) *Freakley v. Fox*, 9 B. & C. 134, per Lord Tenterden, C.J.; and see Williams on Executors, pt. III. bk. iii. ch. ii. § 9.

(*u*) Bl. vol. ii. 512. Also the legatee of a term of years has no right to enter without the executor's consent;

Williams on Executors, 685.

(*x*) 9 Geo. II. c. 36. See M. L. R. P. 99. See *In re Vaughan, Vaughan v. Thomas*, W. N. (1886), 118.

(*y*) Williams on Executors, pt. III. bk. iii. ch. ii. § 3.

(*z*) *Bothomley v. Sherson*, L. R. 20 Eq. 308, 309. See *In re Ovey, Broadbent v. Barrow*, 20 Ch. D. 676.

“In the first place it is a part of the testator’s property. A general bequest may or may not be a part of the testator’s property. A man who gives £100 money or £100 stock may not have either the money or the stock, in which case the testator’s executors must raise the money or buy the stock, or he may have money or stock sufficient to discharge the legacy, in which case the executors would probably discharge it out of the actual money or stock. But in the case of a general legacy it has no reference to the actual state of the testator’s property, it being only supposed that the testator has sufficient property, which, on being realised, will procure for the legatee that which is given to him; while, in the case of a specific bequest, it must be of a part of the testator’s property itself. That is the first thing. Chap. XIV.

“In the next place, it must be a part emphatically, as distinguished from the whole. It must be what has been sometimes called a severed or distinguished part. It must not be the whole, in the meaning of being the totality of the testator’s property or the totality of the general residue of his property after having given legacies out of it. But if it satisfy both conditions, that it is a part of the testator’s property itself, and is a part as distinguished, as I said before, from the whole, or from the whole of the residue, then it appears to me to satisfy everything that is required to treat it as a specific legacy. I hope the definition which I have attempted to give will be more successful than those which have been attempted before, but I can only express that hope with some degree of trepidation.”

The part may be defined in any way which distinguishes it; thus the gift may be of “the black horses which I now have,” or of “the black horses of which I shall be possessed at the time of my death,” or of “all the horses which I may have in my stable at the time of my death,” or of “any stock-in-trade of wines and spirituous liquors which I shall be possessed of at the time of my death,” or of “all my shares or stock in the Midland Railway Company”(a).

As a rule the thing specifically bequeathed must at the testator’s death remain *in specie* as described by his will; Ademption.

(a) *Bothamley v. Sherson*, L. R. 20 Eq. 309.

Chap. XIV. therefore, if after making his will he alienate it, the legacy will be 'adeemed,' that is, revoked by ademption or taking away (*b*). But where the testator has pledged the property to secure a debt, as a rule the legatee has a right to have the specific legacy redeemed out of the testator's general personal estate, or to be given out of the assets compensation to the amount of the legacy (*c*).

Abatement.

In case the assets be insufficient to meet the debts and legacies, the general legacies must 'abate' in equal proportions to pay the debts; but only when the assets not specifically bequeathed are insufficient to pay all the debts must the specific legatees abate, in proportion to the value of their individual legacies (*d*).

Demonstrative legacies

Besides general and specific legacies there may be legacies of quantity in the nature of specific legacies, as, of so much money with reference to a particular fund for payment; these are called 'demonstrative.' They are not liable to abate with general legacies upon a deficiency of assets, but must abate with the specific legacies: on the other hand, if the fund be called in or fail, the legatee is entitled to receive his legacy out of the general assets (*e*).

Payment of legacies.

If a legacy be given generally it is due on the day of the death of the testator; but an executor cannot be compelled to pay a legacy, notwithstanding a direction by the testator, before a year from the testator's death has elapsed, during which time it is presumed he may fully inform himself of the state of the property and have reduced the personal

(*b*) Williams on Executors, pt. III. bk. iii. ch. iii.

(*c*) *Bothamley v. Sherson*, L. R. 20 Eq. 314.

(*d*) Williams on Executors, pt. III. bk. iii. ch. iv. § 2.

(*e*) Williams on Executors, pt. III,

bk. iii. ch. ii. § 3, and ch. iv. § 2. As regards legacies, general, specific, and demonstrative, and ademption, see *Ashburner v. Macquire* (and notes), Wh. & T. L. Ca. in Eq. vol. ii. 246; Theobald on Wills, ch. xv.

estate into possession. After that interest will be payable Chap. XIV.
on general legacies from such period, unless the time for payment of the legacies is fixed at a later time by the will (*f*). Similarly in the case of a gift of a sum of money to one for life with remainder over (*g*), interest begins to run from the end of the first year after the testator's death (*h*).

Where personal estate is given, in terms amounting to a general residuary bequest, to be enjoyed by persons in succession, in the absence of any express or implied intention of the testator that it is to be enjoyed *in specie* or of any other direction as to investment, it is the duty of the executors (unless so invested) to convert the same and invest it upon such securities as trustees are authorised to invest upon (*i*): the tenant for life is entitled to income as from the death of the testator (*k*). In the case of specific legacies, whatever produce accrues to them from death belongs to the legatee (*l*).

Legacies to infants or persons abroad may be paid into the Bank of England, with the privity of the Paymaster-General (*m*).

We have seen that contingent or executory interests may be disposed of by the will of a testator dying before the contingency upon which they depend takes effect (*n*); for such purpose they must 'vest' in right, though they do not

Vested—
contingent.

(*f*) Williams on Executors, pt. III. bk. iii. ch. iv. § 4, § 6. See Theobald on Wills, ch. xvii.

(*g*) As to such gifts, see *ante*, p. 4.

(*h*) *In re Whittaker*, L. R. 21 Ch. D. 657.

(*i*) *Howe v. Earl of Dartmouth* (and notes), Wh. & T. L. Ca. in Eq. vol. ii. 321; and see 22 & 23 Vict. c. 35, s. 32; 23 & 24 Vict. c. 38, ss. 10, 11; R. S. C.

1883, Ord. XXII. r. 17.

(*k*) As to what income, see *Brown v. Gellatly*, L. R. 2 Ch. Ap. 751; and *In re Chancellor*, *Chancellor v. Brown*, 26 Ch. D. 42.

(*l*) Williams on Executors, pt. III. bk. iii. ch. iv. § 4, § 6. See Theobald on Wills, ch. xvii.

(*m*) 36 Geo. III. c. 52, s. 32; 35 & 36 Vict. c. 44.

(*n*) *Ante*, p. 289.

Chap. XIV. vest in possession. Of course, if the contingency is the endurance of life of the person to take until a particular period, and he die before, the interest will be extinguished by his death. There may be an express direction in the will as to the period of vesting, or there may be no direction and the period be left to inference. In the former case the word 'vest' will *primâ facie* refer to vesting in interest and transmissibility, but in many cases it is used as equivalent to vesting in possession or payable. The question in each case is, did the testator mean to annex the time to the payment of the legacy, or to the gift of it (*o*). Again, a legacy may be vested but subject to an executory bequest over on the happening of a subsequent event, for instance, a legacy given to a father on condition that he did not interfere with the education of his daughter; in such case the legatee will receive his legacy, but it will be a question whether he should give security in case the event should happen (*p*). Or the legacy may be vested subject only to a condition subsequent, as that the legatee should not become a nun; in such case there need be no gift over for the condition to take effect; although, if the condition be in restraint of marriage, or not to dispute the will, for it to take effect there must be a gift over, else it will be treated merely as a clause *in terrorem* (*q*). A condition subsequent defeating a legacy on the legatee alienating it, or permitting it to become liable to distribution among his creditors in bankruptcy, has been held inoperative (*r*).

(*o*) Theobald on Wills, ch. xxxiii.; Williams on Executors, pt. II. bk. iii. ch. iii., and pt. III. bk. iii. ch. ii. § 5; and see M. L. R. P. 229.

(*p*) Williams on Executors, pt. III. bk. iii. ch. ii. § 6, and ch. iv. § 4. As to conditions subsequent, &c., see M.

L. R. P. 175 *et seq.*

(*q*) *Dickson's Trust*, 1 Sim. N. S. 37, *per* Lord Cranworth; and see *Scott v. Tyler* (and notes), Wh. & T. L. Ca. in Eq. vol. ii. 120.

(*r*) *Ib.*

If there is no disposition of the residue, or if the gift fails, the executors, by virtue of Lord Cranworth's Act (*s*), take it in trust for the next of kin of the deceased, unless otherwise directed by the will; but if there is no next of kin and no intention disclosed on the face of the will that the executors shall be excluded from taking beneficially, they will be entitled (*t*).

Chap. XIV.

Residue.

If an executor or administrator squander, or misapply, or omit to get in, the assets, he is said to be guilty of a *devastavit* or wasting of the assets, for which he is personally liable in equity (*u*); for instance, if without authority from the will, he carry on the business of the deceased, that is, by buying and selling (*x*).

VII. Devastavit.

Where the testator authorises a particular fund or property to be employed in carrying on his trade that fund or property alone will be answerable to the creditors of the trade subsequent to his death: the executor, however, by trading becomes liable to them, as personally responsible, to the extent of all his own property (*y*).

Carrying on business of testator.

In 1860, by Lord Cranworth's Act (*z*), power was given to executors to compound debts, &c., if acting under a will executed after the passing of it; this Act has been repealed (*a*), and now by the Conveyancing and Law of Property Act, 1881 (*b*), it is enacted in regard to executorships generally that:—

Compounding debts, &c., by executor.

(*s*) 11 Geo. IV. & 1 Wm. IV. c. 40.

(*t*) See *Chester v. Chester*, L. R. 12 Eq. 444; and see M. L. R. P. 285, as to trustee deriving advantage from a trust.

(*u*) Williams on Executors, pt. IV. bk. ii. ch. ii. § 2.

(*x*) See Williams on Executors, pt. IV. bk. ii. ch. ii. § 1.

(*y*) *Ex parte Garland*, 10 Ves. 110. See *Gallagher v. Ferris*, L. R. 7 (Ir. Ch.), 496; *In re Evans*, L. R. 34 Ch. D. 597.

(*z*) 23 & 24 Vict. c. 145, ss. 30, 34.

(*a*) 44 & 45 Vict. c. 41 (Conveyancing Act), s. 71, and 45 & 46 Vict. c. 38 (Settled Land Act), s. 64.

(*b*) 44 & 45 Vict. c. 41, s. 37.

Chap. XIV.

S. 37 (1.) "An executor may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) "An executor, or two or more trustees acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's estate, or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) "As regards trustees, this section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) "This section applies to executors and trusts constituted or created either before or after the commencement of this Act."

It will be observed that the above provisions do not apply to administrators (*c*). It would seem that the effect of it is to leave an executor liable for delay in suing for his testator's debt only where he has not acted in good faith (*d*).

VIII. Admin-
istrators.

The jurisdiction to grant letters of administration of the effects of an intestate is, it will have been seen, the same as to grant probate of the will of a deceased (*e*).

(*c*) *In re Clay & Tetley*, L. R. 16 Ch. D. 3. 47 L. T. 64, *per* Jessel, M.R.
(*e*) *Ante*, p. 288.
(*d*) See *Re Owens, Jones v. Owens*,

The administrator deriving his authority only from the grant by the Court of letters of administration, as a rule the party entitled to administration, unlike an executor, can do nothing before such grant, and the property vests in him only from the time of grant (*f*). By the Court of Probate Act Amendment Act, 1858 (*g*), provision was made for the vesting of the property of the intestate between his death and such grant as follows :—

S. 19. “ From and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the Judge of the Court of Probate for the time being, in the same manner and to the same extent as heretofore they vested in the ordinary.”

In 1833, by the Act for the limitation of actions and suits relating to real property, it had been already enacted (*h*) :—

S. 6. “ That for the purposes of this Act an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration : ”

that is to say, time will run as if letters of administration had been granted immediately after the death of the intestate (*i*).

We have seen (*k*) that an executor having acted in the

(*f*) Williams on Executors, pt. I. bk. v. ch. i. § 2, and pt. II, bk. i. ch. i.

(*g*) 21 & 22 Vict. c. 95, s. 19.

(*h*) 3 & 4 Wm. IV. c. 27, s. 6.

(*i*) *In re Williams, Davies v. Williams*, L. R. 34 Ch. D. 558.

(*k*) *Ante*, p. 302.

Chap. XIV. administration must take probate, but a next of kin, though he have intermeddled with the effects and made himself liable as executor *de son tort*, cannot be compelled to take the office of administrator (*l*).

Administration once granted, no one can during the life of the administrator have a similar grant; on the other hand, an executor nominated by the will can obtain probate notwithstanding probate previously taken out by his co-executor (*m*).

Who entitled
to adminis-
tration.

Reference has been made to the exclusive right of the husband to the administration of his wife's estate (*n*), and in other cases to the right of the widow or next of kin or both (*o*). The Court prefers a sole to joint administration, and, under ordinary circumstances, in favour of the widow (*p*). Upon the principle that the right to administration follows the right to the property, the next of kin must be ascertained under the Statute of Distributions (*q*), which was passed to avoid the hardship upon those of kin to the intestate in equal degree with the administrator of his being theretofore entitled exclusively to enjoy the residue of the intestate's effects, after payment of his debts and funeral expenses (*r*). The Statute of Distributions, however, designates only the wife and children, or children's children (which includes lineal descendants to the remotest degree), and the next of kindred in equal degree, or legally representing their stocks, according to the law in such cases.

(*l*) Williams on Executors, pt. I. bk. v. ch. ii. § 1, p. 444.

(*m*) *Ib.*, p. 434.

(*n*) *Ante*, p. 292.

(*o*) *Ante*, p. 288.

(*p*) Williams on Executors, pt. I.

bk. v. ch. ii. § 1, p. 423.

(*q*) 22 & 23 Car. II. c. 10; 1 Jac. II. c. 17, cuts down mother's right to child's property.

(*r*) Williams on Executors, 1489.

The proximity of the degrees of 'kindred' our Courts have reckoned by the civil law, and not according to the law of the canonists which was adopted with regard to the descent of real estate (*s*). Consanguinity is lineal or collateral. The former subsists between persons of whom one is descended in a direct line from the other, upwards in the ascending line or downwards in the descending line; every generation constitutes a different degree reckoning either upwards or downwards (*t*). Collateral relations agree with the lineal in that they descend from the same stock or ancestor, but differ in that they do not descend from each other: to compute the degrees, according to the civil law, one must count upwards from either of the persons related, to the common stock, and then downwards again to the other, reckoning a degree for each person both ascending and descending (*u*), and so take the sum of the degrees in both lines to the common ancestor (*x*); for in the civil computation the intestate himself was the *terminus a quo*, and not the common ancestor according to the rule of the canonists (*y*). An exception to the above rule of computation has been established where the nearest of kin are a grandfather or grandmother and brothers or sisters of the intestate: in such case though in equal degree the grandfather or grandmother take no share of the estate with the brothers and sisters (*z*), who therefore are entitled to administration in preference.

Unlike the case with regard to the descent of real estate,

(*s*) *Thomas v. Ketteriche*, 1 Ves. sen. 334; Bl. vol. ii. 504.

(*t*) Bl. vol. ii. 202—204. He adds that at the 20th degree every man hath above a million ancestors; and the number of ancestors at 40 degrees

would be upwards of a million millions!

(*u*) Bl. vol. ii. 204, 207.

(*x*) *Ib.* 207, note by Christian.

(*y*) *Ib.* 504.

(*z*) *Evelyn v. Evelyn*, 3 Atk. 762.

Chap. XIV. relations on the mother's side stand in the same position as relations on the father's side, relations by the half-blood as relations by the whole blood; and there is no rule of primogeniture, or of preference of males to females (*a*). Where, however, several persons stand in the same degree of kindred to the intestate, administration may be granted to one or more (*b*); the Court prefers a sole to a joint administration (*c*). The first consideration is the interest of the estate, subject thereto administration will as a rule be given to the nominee of the majority of interests (*d*); but not where the contest is between one of the whole blood and one of the half-blood, in such case the whole blood will be preferred (*e*). Again, other things being equal, the elder brother will be preferred; and similarly a son will be preferred to a daughter (*f*).

If a bastard, who has no kindred, being *nullius filius*, or any one else who has no kindred, died intestate and without wife or child, it was formerly held that the Ordinary might seize his goods and dispose of them *in pios usus*; later the usual course was for some one to procure letters patent or other authority from the Crown, and administration was granted to the appointee of the Crown (*g*). The grant is now usually made to the solicitor for the time being of the Treasury under direction of Her Majesty by a warrant under her sign manual, for the use and benefit of Her

(*a*) Bl. vol. ii. 504, 505. As to descent of real estate, see M. L. R. P. ch. iv.

(*b*) 21 Hen. VIII. c. 5, *ante*, p. 288.

(*c*) Williams on Executors, pt. I. bk. v. ch. ii. § 1, p. 434; pt. III. bk. i. ch. ii.

(*d*) *In the Goods of Sarah Stainton*, L. R. 2 Pr. & D. 212.

(*e*) Williams on Executors, pt. I. bk. v. ch. ii. § 1.

(*f*) *Ib.*

(*g*) Bl. vol. ii. 505. Where intestate leaves a widow but no next of kin, she takes one moiety of his personal estate, and the Crown is entitled to the other: *Cave v. Roberts*, 8 Sim. 214.

Majesty; under the provisions of the statute 15 Vict. c. 3, Chap. XIV. such grant will devolve upon each succeeding solicitor in perpetual succession. As to actions and proceedings for the recovery of the personal estate of such deceased, the Intestates' Estates Act, 1884 (*h*), contains the following provisions :—

S. 2. "Where the administration of the personal estate of any deceased person is granted to a nominee of Her Majesty (whether the Treasury solicitor, or a person nominated by the Treasury solicitor, or any other person), any action or other proceeding by or against such nominee for the recovery of the personal estate of such deceased person, or any share thereof, shall be of the same character, and be brought, instituted, and carried on in the same manner, and be subject to the same rules of law and equity (including the rules of limitation under the Statutes of Limitation or otherwise), in all respects as if the administration had been granted to such nominee as one of the next of kin of such deceased person.

S. 3. "After the passing of this Act an information or other proceeding on the part of Her Majesty shall not be filed or instituted, and a petition of right shall not be presented, in respect of the personal estate of any deceased person or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity in and subject to which an action for the like purpose might be brought by or against a subject."

If all the next of kin reside out of the country, administration may be granted to the attorney of them all; and, if the effects are under £20, whether so resident or not (*i*).

If none of the kindred will take out administration a creditor may, by custom, do it (*k*), upon the ground that he

Grant to a creditor.

(*h*) 47 & 48 Vict. c. 71.

bk. v. ch. ii. § 1, p. 444.

(*i*) Williams on Executors, pt. I.

(*k*) Bl. vol. ii, 505.

Chap. XIV. cannot be paid his debt until representation of the deceased is made (*l*).

Special and
limited
administra-
tions.

Also where a loss is likely to occur if a grant of general letters of administration is delayed, the Court may make a grant of administration to a creditor, or to a stranger, *ad colligendum bona defuncti*, to gather up the goods of the deceased, that is, to keep them in safe custody, and even to dispose of the property or part of it by sale (*m*).

By the Court of Probate Act, 1857 (*n*), in case of the insolvency of the estate of the deceased or other special circumstances, the Court may appoint a person to be administrator of the estate or part of it, who is not entitled by law to a grant. It enacted as follows:—

S. 73. “Where a person has died or shall die wholly intestate as to his personal estate or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the Court to be necessary or convenient in any such case by reason of the insolvency of the estate of the deceased or other special circumstances to appoint some person to be the administrator of the personal estate of the deceased or of any part of such personal estate other than the person who, if this Act had not been passed, would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the Court to grant administration of the personal estate of such deceased person to the person who if this Act had not passed would by law have been entitled to a grant thereof, but it shall be lawful for the Court, in

(*l*) Williams on Executors, pt. I. bk. v. ch. ii. § 1.

(*m*) Bl. vol. ii. 505; *In the Goods of Stewart*, L. R. 1 Pr. & D. 727; *In the Goods of Schwerdtfeger*, 1 Pr. D. 424.

(*n*) 20 & 21 Vict. c. 77, s. 73. See *Clerke v. Clerke*, L. R. 6 Pr. D. 103; *In the Goods of Elizabeth Wensley*, 7 Pr. D. 13.

its discretion, to appoint such person as the Court shall think fit to be such administrator, upon his giving such security (if any) as the Court shall direct, and every such administration may be limited as the Court shall think fit.” Chap. XIV.

Unlike the grant of probate to an executor, letters of administration will not be granted to a bankrupt (*o*); but, as in the case of an infant nominated executor, if the next of kin is a minor, administration will be granted to another *durante minore ætate* (*p*).

Where the grant has been to two and one dies, the office will survive to the other as sole administrator. Otherwise, on the death of an administrator the office ceases, and if the administration has not been completed, there must, as in the case of the death of an executor intestate, be administration *de bonis non* (*q*).

As well when an action is pending touching the right to administration as when one is pending touching the validity of a will and right to probate, will administration *pendente lite* be granted. It is enacted by the Court of Probate Act, 1857 (*r*):—

S. 70. “Pending any suit touching the validity of the will of any deceased person or for obtaining, recalling, or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the Court, and act under its direction.”

(*o*) Williams on Executors, pt. I.
bk. v. ch. ii. § 2.

(*p*) *Ib.*; and ch. iii. § 3.

(*q*) *Ib.*

(*r*) 20 & 21 Vict. c. 77, s. 70.

Chap. XIV.

And the Court may order that the administrator shall receive reasonable remuneration out of the estate (*s*).

Administration *durante absentia* was always granted before probate had been obtained or letters of administration had issued, if the executor or next of kin were abroad; the power to grant administration after probate for the purpose of exhibiting a bill in equity was conferred by the statute 38 Geo. III., c. 87, if at the expiration of twelve calendar months from the death of any testator, the executors, or executor, to whom probate had been granted, were or was residing out of the jurisdiction. By the Court of Probate Act, 1857 (*t*), the provisions of that statute were made to apply in like manner to all cases where letters of administration have been granted, and the person to whom such administration has been granted is out of the jurisdiction. And it being held that the statute of Geo. III. applied only to cases where there were proceedings in Chancery, it was enacted by the Court of Probate Act Amendment Act, 1858 (*u*), that the provisions of that statute and of the Court of Probate Act

S. 18. "Shall be extended to all executors and administrators residing out of the jurisdiction of Her Majesty's Courts of law and equity, whether it be or be not intended to institute proceedings in the Court of Chancery, and to all grants made before and subsequently to the passing of the last-mentioned Act, and it shall be lawful to alter the language of the grant prescribed by the first-named statute so as to make it apply to grants made in the Court of Probate under last-mentioned Act."

Administra-
tion bond.

To secure the due getting in and administration of a de-

(*s*) 20 & 21 Vict. c. 77, s. 72.

(*t*) 20 & 21 Vict. c. 77, s. 74.

(*u*) 21 & 22 Vict. c. 95, s. 18.

ceased's estate the oath of an executor is considered sufficient, but a bond is taken from the administrator, and, if the Court or district registrar require, with one or more sureties. A surety was required by the Statute of Administration (*v*), and a bond with sureties by the Statute of Distributions (*w*). The present practice as regards taking a bond and enforcing it and requiring sureties is regulated by the Court of Probate Act, 1857 (*x*), by which it is enacted:—

S. 81. "Every person to whom any grant of administration shall be committed shall give bond to the Judge of the Court of Probate to enure for the benefit of the Judge for the time being, and, if the Court of Probate or (in the case of a grant from the District Registry,) the District Registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the Judge shall from time to time by any general or special order direct: Provided that it shall not be necessary for the solicitor for the affairs of the Treasury or the solicitor of the Duchy of Lancaster applying for or obtaining administration to the use or benefit of Her Majesty to give any such bond as aforesaid (*y*).

S. 82. "Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the Court or District Registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the Court or District Registrar so to do, and the Court or District Registrar may also direct that more bonds than one shall be given, so as to limit the liability of any surety to such amount as the Court or District Registrar shall think reasonable.

S. 83. "The Court may, on application made on motion or petition in a summary way, and on being satisfied that

(*v*) 21 Hen. VIII. c. 5, s. 3.

(*w*) 22 & 23 Car. II. c. 10, s. 1.

(*x*) 20 & 21 Vict. c. 77, ss. 81—83.

(*y*) This is in accordance with 15 Vict. c. 3, s. 2. See *ante*, p. 316.

Chap. XIV.

the condition of any such bond has been broken, order one of the Registrars of the Court to assign the same to some person to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name both at law and equity, as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon as trustee, for all persons interested, the full amount recoverable in respect of any breach of the condition of the said bond."

Duties of
administrator.
Statutes of
Distribution.

The administrator's duties of administration correspond to those of the executor, except that there being no will of the deceased to guide or direct him, he must, after payment of the expenses of funeral and of taking out administration, and of the debts of the deceased, distribute the deceased's estate as the law directs, that is to say (subject to what has been said as to the right of the husband (*z*)) as required by the Statutes of Distribution, 22 & 23 Car. II. c. 10 and 1 Jac. II. c. 17. By the earlier statute it was enacted (*a*) that such residue should, after the expiration of a year from the intestate's death (*b*), be distributed (though vested at death)

"Amongst the wife and children or children's children, if any such be, or otherwise to the next of kindred to the dead person in equal degree, or legally representing their stocks *pro suo cuique jure* according to the laws in such cases and the rules and limitation hereafter set down."

Then it is directed that such residue or surplusage is to be distributed in manner following, that is to say (*c*):—

(*z*) *Anté*, p. 296.

(*a*) 22 & 23 Car. II. c. 10, s. 1.

(*b*) S. 5.

(*c*) *i.e.* if such child would have

more, he must bring into 'hotchpot' what he has received. See M. L. R. P. 37.

“One-third part of the said surplusage to the wife of the intestate, and all the residue by equal portions to and amongst the children of such persons dying intestate, and such persons as legally represent such children in case any of the said children be then dead, other than such child or children (not being heir at law) who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate in his lifetime by portion or portions equal to the share which shall by such distribution be allotted to the other children, to whom such distribution is to be made. And in case any child other than the heir at law who shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate in his lifetime by portion not equal to the share which will be due to the other children by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate to be distributed to such child or children as shall have any land by settlement from the intestate, or were advanced in the lifetime of the intestate as shall make the estate of all the said children to be equal as near as can be estimated (*c*). But the heir at law, notwithstanding any land that he shall have by descent or otherwise from the intestate is to have an equal part in the distribution with the rest of the children without any consideration of the value of the land which he hath by descent or otherwise from the intestate. And in case there be no children nor any legal representatives of them, then one moiety of the said estate to be allotted to the wife of the intestate, the residue of the said estate to be distributed equally to every of the next of kindred of the intestate who are in equal degree and those who legally represent them.

S. 4. “Provided that there be no representations admitted among collaterals after brothers’ and sisters’ children (*d*), and in case there be no wife then all the said estate to be distributed equally to and amongst the children, and in case there be no child then to the next of kindred in equal degree of, or unto the intestate and their legal representatives as aforesaid and in no other manner whatsoever.”

And with respect to the right of a mother to a share

(*d*) Where there is no brother or sister of the intestate living, the children will take *per capita*; otherwise *per stirpes*; *Lloyd v. Tench*, 2 Ves. Sen. 215.

Chap. XIV. with brothers and sisters of the deceased, instead of to the whole as previously, it was enacted by the later statute (*d*) that:—

S. 7. “If after the death of a father any of his children shall die intestate without wife or children in the lifetime of the mother every brother and sister and the representatives of them shall have an equal share with her any thing in the last-mentioned Acts to the contrary notwithstanding.”

The rules of consanguinity by which the ‘next of kindred’ to the deceased are to be ascertained have already been considered with regard to the grant of administration (*e*).

Special customs which formerly prevailed in the City of London, the province of York, and certain other places, respecting the distribution of the personal estates of intestates have been abolished with reference to all persons dying on or after January 17, 1857, by the Act for the Uniform Administration of the Estates of Intestates (*f*).

IX. Adminis-
tration
action.

An action could not be maintained at law against an executor for a general legacy, even upon an express promise to pay and admission of assets (*g*), unless he ceased to hold it as executor, and retained it in another character (*h*); but it has been otherwise with regard to a specific legacy after an assent by him to the bequest, because the property in the subject of it vests in the legatee upon the assent (*i*).

Therefore for obtaining payment of a general legacy, and in like manner of a distributive share of the estate of an intestate, recourse is had against the executor or administrator for administration of the estate in a Court of Equity.

(*d*) 1 Jac. II. c. 17, s. 7.

(*e*) *Ante*, p. 314.

(*f*) 19 & 20 Vict. c. 94.

(*g*) *Deeks v. Strutt*, 5 Term Rep.

690.

(*h*) *Topham v. Morecraft*, 8 Ell. & Bl. 972.

(*i*) *Williams v. Lee*, 3 Atk. 223.

The former jurisdiction of the Ecclesiastical Courts for **Chap. XIV.** legacies, or for the distribution of residues, was taken away, but not transferred to the Court of Probate, by the Act of 1857 establishing the Court (*k*). By the Judicature Act, 1873 (*l*), all causes and matters for the administration of the estates of deceased persons were assigned to the Chancery Division of the High Court. In like manner administration by the Court may be obtained on the application of the executors or administrators themselves, and likewise by creditors of the deceased.

By the County Courts Act, 1846 (*m*), the jurisdiction given to such Courts was made to extend to the recovery of any demand, not exceeding the sum of £20, being "the amount or part of the amount of a distributive share under an intestacy, or of any legacy under a will." This jurisdiction was extended by the County Courts Act, 1850 (*n*), to a demand not exceeding £50. But these Courts have not cognizance of any action in which the validity of any bequest under a will is disputed (*o*). Otherwise, according to the jurisdiction of the Court as regards the amount of claim, an executor or administrator may sue and be sued as in a superior Court of Law (*p*); for instance, in the case of actions surviving to or against executors or administrators, or where they are personally liable.

By the County Courts Act, 1865 (*q*), also equitable jurisdiction was given to such Courts, namely (*r*):—

S. 1 (1.) "In all suits by creditors, legatees (whether spe-

(*k*) 20 & 21 Vict. c. 77, s. 23.

(*o*) 9 & 10 Vict. c. 95, s. 58.

(*l*) 36 & 37 Vict. c. 66, s. 34 (3).
As to proceeding by originating summons, see R. S. C. Ord. LV.

(*p*) S. 66; and see County Court Rules, 1886, Ord. XXX.

(*m*) 9 & 10 Vict. c. 95, s. 65.

(*q*) 28 & 29 Vict. c. 99.

(*n*) 13 & 14 Vict. c. 61, s. 1.

(*r*) S. 1, § 1.

Chap. XIV.

cific, pecuniary, or residuary), devisees (whether in trust or otherwise), heirs at law, or next of kin, in which the personal or real or personal and real estate against or for an account or administration of which the demand may be made shall not exceed in amount or value the sum of five hundred pounds."

And the Judge and officers of such Courts were given the powers and authorities of a Judge of the Court of Chancery and his officers (*s*); but power was reserved to the latter Judge to order a suit to be transferred to his Court (*t*). The Court within which proceedings may be taken is that within the district of which the deceased had his last place of abode, or in which the executors or administrators or any one of them have or has their or his place of abode (*u*).

Personal
liability.

A promise by an executor to pay a debt of the deceased, or to answer damages out of his own estate, is *nudum pactum*, and cannot charge him *de bonis propriis*, unless as required at law there be a good consideration for it (which will be implied if by deed), and as required by the Statute of Frauds (*x*) there be a writing signed by him or his agent. By that statute it is enacted :—

S. 4. "That no action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate. . . . unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

(*s*) 28 & 29 Vict. c. 99, s. 2; and see ss. 5, 9. See County Court Rules, 1886, Ord. III. rr. 17—29; Ord. VI. 6; Ord. XXII. r. 11; and Ord.

XXIV.

(*t*) 28 & 29 Vict. c. 99, s. 3.

(*u*) S. 10.

(*x*) 29 Car. II. c. 3, s. 4.

It has been decided under the above statutory provision Chap. XIV. that the consideration of the agreement must appear on the face of the writing, either in express words or arising by necessary implication (*y*); the consideration may be, for instance, of assets come to his hands, of forbearance, &c. (*z*).

Under the provisions of the Real Property Limitation Act, 1874, all legacies, whether charged on land or payable out of the personal estate, are deemed to be satisfied at the end of twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, if no part of the principal or interest be paid, or written acknowledgment given, by the person by whom the same is payable, or his agent, to the person entitled or his agent; and no action or other proceeding to recover the same can be brought but within twelve years from such present right, or payment or acknowledgment, as the case may be (*a*). Limitation of actions.

The same enactment extends to the case of claims to the personal estate, or any share of the personal estate, of any person dying intestate (*b*).

Under the Trustees Relief Acts, 1847, 1849 (*c*), all trustees, executors and administrators, or other persons having in their hands any monies belonging to any trust whatsoever, may pay the same or transfer stocks or securities into Court; and the Court will make orders upon applications Payment into court.

(*y*) *Wain v. Warlters*, 5 East, 10. See *ante*, p. 233.

(*z*) *Williams on Executors*, pt. iv. bk. ii. ch. ii. § 1.

(*a*) 37 & 38 Vict. c. 57, ss. 8, 9. See *Sheppard v. Duke*, 9 Sim. 567; and *M. L. R. P.* 392, 404. Since 19 & 20 Vict. c. 97, s. 10, absence beyond the

seas, or imprisonment of the legatee, would not extend the period; *ante*, p. 273.

(*b*) 37 & 38 Vict. c. 57, ss. 8, 9; 23 & 24 Vict. c. 38, s. 13; 3 & 4 Wm. IV. c. 27, s. 40.

(*c*) 10 & 11 Vict. c. 96; 12 & 13 Vict. c. 74.

Chap. XIV. by summons or petition on behalf of claimants, without the necessity of an action being brought (*d*).

Applications
to court for
advice, &c.

Under Lord St. Leonards' Law of Property and Trustees Relief Act, 1859 (*e*), any trustee, executor, or administrator, may apply to the Court or a Judge, without the institution of a suit, on petition or summons for opinion, advice, or direction, on any question respecting the management or administration of the trust property or the assets of any testator or intestate. Also under the Rules of the Supreme Court, application can in like manner be made to a Judge, not only by trustees, executors, or administrators, but also by all parties interested, by Originating Summons (*f*). The scope of such proceeding is far more extensive; and questions of construction can be raised, which cannot be done under Lord St. Leonards' Act (*g*).

X. Duties.
On affidavit
for probate or
administra-
tion.

By the Customs and Inland Revenue Act, 1881 (*h*), since June 1st, 1881, *ad valorem* duty (*i*) upon the personal estate and effects of a deceased is payable on the affidavit used in applying for probate of will or for letters of administration; previously it was payable upon the grant. Where the deceased has died domiciled in the United Kingdom, the aggregate amount of his debts and funeral expenses is to be deducted (*k*). Duty overpaid will be

(*d*) See R. S. C. 1883, Ord. LV. r. 2 (5). As to County Courts, see 28 & 29 Vict. c. 99, s. 1 (5); 30 & 31 Vict. c. 142, s. 24; and C. C. R., 1886, Ord. XXXVIII.

(*e*) 22 & 23 Vict. c. 35, s. 30. See 23 & 24 Vict. c. 38, s. 9; and *In re Boulton's Trusts*, W. N. (1882), 62; also R. S. C. Ord. LII. rr. 19—22; and Ord. LXV. r. 26. As to County Courts, see 28 & 29 Vict. c. 99, s. 1 (5); and C. C. R., Ord. XXXVIII. r. 1.

(*f*) R. S. C. Ord. LVII.

(*g*) *Re Hooper*, 29 Bea. 656.

(*h*) 44 Vict. c. 12; and see 55 Geo. III. c. 184, s. 38, forbidding grants of probates, &c., without affidavit of value. As to account to accompany affidavit, see 43 Vict. c. 14, s. 10.

(*i*) See 43 Vict. c. 14, s. 9, and Sched. of Duties.

(*k*) 44 Vict. c. 12, s. 28. As to mortgage debts on leaseholds, see 31 & 32 Vict. c. 124, s. 7.

returned ; and, in like manner, if the value of the property turns out to be greater than was set out in the affidavit, further duty must be paid (*l*). Where the value of the personal estate, without any deduction for debts or funeral expenses, exceeds the value of £100, but does not exceed the value of £300, a fixed duty of 30s. is payable (*m*). Credit may be given in certain cases where it is not convenient to pay the duty down (*n*). Ships at sea are to be charged for as if at port of registration (*o*). Personal estate appointed by will under a general power has been made chargeable with probate duty, which shall be a charge or burden upon such property (*p*). Chap. XIV.

In order to prevent dispositions to take effect after death, other than by will, or in fraud of the revenue, it has been enacted by the Customs and Inland Revenue Act, 1881 (*q*), that stamp duties, at the like rates as charged on affidavits, shall be charged on accounts, which are to be delivered by any person acquiring possession or assuming the management of personal property of the following descriptions, namely,—

On accounts
in respect of
donationes
mortis causâ,
&c.

(*a.*) “ Any property taken as *donatio mortis causâ* made by any person dying on or after the first day of June, one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been *bonâ fide* made three months before the death of the deceased.

(*l*) 44 Vict. c. 12, ss. 31, 32 ; and see 5 & 6 Vict. c. 79, s. 23 ; 24 & 25 Vict. c. 92, s. 3.

(*m*) 44 Vict. c. 12, ss. 33—36. See s. 27 ; 43 Vict. c. 14, s. 13.

(*n*) 55 Geo. III. c. 184, ss. 45—49.

(*o*) 27 & 28 Vict. c. 56, s. 4.

(*p*) 23 & 24 Vict. c. 15, ss. 4, 5. See 8 & 9 Vict. c. 76, s. 4, as to special power. And see M. L. R. P. 322 *et seq.*

(*q*) 44 Vict. c. 12, ss. 38—40. See also Succession Duty Act (16 & 17 Vict. c. 51), s. 8.

Chap. XIV.

(b.) "Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(c.) "Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property."

Legacies.
Successions.
Legacy
Duty Acts.

Legacies under a will and distributive shares under an intestacy are also subject to duty, under the provisions of the statute 36 Geo. III. c. 52. The statute provided (*inter alia*) for duties on legacies enjoyed in succession (*r*), and legacies subjected to a power of appointment (*s*). For the purpose of such duty a 'legacy' was thus defined by a later statute (*t*):—

"Every gift by any will or testamentary instrument of any person, which by virtue of any such will or testamentary instrument is or shall be payable, or shall have effect or be satisfied out of the personal or moveable estate or effects of such person, or out of any personal or moveable estate or effects which such person hath had or shall have had power to dispose of, or which gift is or shall be payable or shall have effect or be satisfied out of or is or shall be charged or rendered a burden upon the real or heritable estate (*u*) of such person, or any real or

(*r*) 36 Geo. III. c. 52, ss. 12—15.

(*s*) S. 18.

(*t*) 8 & 9 Vict. c. 76, s. 4.

(*u*) By whom to be paid, see 45 Geo. III. c. 28, s. 5.

heritable estate or the rents or profits thereof which such person hath had or shall have had any right or power to charge, burden, or affect with the payment of money or out of or upon any monies to arise by the sale, burden, mortgage, or other disposition of any such real or heritable estate or any part thereof, whether such gift shall be by way of annuity or in any other form, and also every gift which shall have effect as a donation *mortis causâ*, shall be deemed a legacy within the true intent and meaning of all the several Acts granting or relating to duties on legacies in Great Britain and Ireland respectively, and shall be subject and liable to the said duties accordingly: Provided always, that no sum of money which by any marriage settlement is or shall be subjected to any limited power of appointment to or for the benefit of any person or persons therein specially named or described as the object or objects of such power, or to or for the benefit of the issue of any such person or persons, shall be liable to the said duties on legacies under the will in which such sum is or shall be appointed or apportioned in exercise of such limited power."

Chap. XIV.

By the Succession Duty Act (*x*), which came into operation on May 19th, 1853, it was enacted that leaseholds should no longer be charged with duties under the Legacy Act, but under that Act the stamp duties themselves, both upon legacies and upon successions upon intestacy, are regulated by the statute 55 Geo. III. c. 149, if the legacy or succession be to a lineal descendant or lineal ancestor of the deceased, at the rate of 1*l.* per cent. ; if to a brother or sister or any descendant, of 3*l.* per cent. ; if to an uncle or aunt or any descendant, of 5*l.* per cent. ; if to a great uncle or aunt or any descendant, of 6*l.* per cent. ; if to any other relation or to a stranger in blood, of 10*l.* per cent.

Legacies and residues, or shares of residue, given or devolving to or for the benefit of the husband or wife of the

(*x*) 16 & 17 Vict. c. 51, s. 19.

Chap. XIV. deceased, or to or for the benefit of any of the Royal Family are exempted (*y*). Where the wife or husband is of nearer consanguinity to the deceased than the person to take, the rate of duty will only be such as the wife or husband would have been chargeable with (*z*).

Where the value of the whole of the personal estate of any person dying after the 24th March, 1880, does not amount to 100*l.*, no legacy duty is to be charged in respect of it or any portion of it (*a*).

Where duty of 1*l.* per centum would otherwise be payable as above mentioned, it is not, since June 1st, 1881, payable in respect of any legacy, residue, or share of residue payable out of or consisting of any estate or effects according to the value whereof duty has been paid upon the affidavit for grant of probate or letters of administration (*b*). And where the fixed duty of 30*s.* has been paid upon such affidavit where the gross value of the estate does not exceed 300*l.*, it will also be in satisfaction of any claim to legacy or succession duty (*c*).

Under the statute 55 Geo. III. c. 184, upon every legacy "specific, pecuniary, or of any other description," of the amount or value of 20*l.* or upwards, duty was payable; and similarly upon the residue or share of the residue, whether under testamentary disposition or an intestacy. But now duty is payable upon every pecuniary legacy, or residue, or share of residue, under the will or intestacy of any person dying on or after June 1st, 1881, although not of an amount or value of 20*l.* (*d*).

As we have seen, the leasehold hereditaments of a

Succession
Duty Act.

(*y*) 55 Geo. III. c. 184, Sched.
pt. III.

(*z*) 16 & 17 Vict. c. 51, s. 11.

(*a*) 43 Vict. c. 14, s. 13,

(*b*) 44 Vict. c. 12, s. 41.

(*c*) S. 36.

(*d*) S. 42.

deceased are not to be charged with duty under the Legacy Duty Acts, but are made chargeable under the Succession Duty Act *(e)*. Under that Act also are chargeable generally successions to (real and) personal estate not subject to duty under the Legacy Duty Acts *(f)*, at the same rate *(g)*, payable on the successor becoming entitled in possession *(h)*; except when the whole succession or successions derived from the same predecessor and passing upon any death to any person or persons does not amount in value to 100*l.*, or where the succession, estimated according to the provisions of the Act, is of less value than 20*l.* in the whole, or where the succession, if the same were a legacy bequeathed by the predecessor, would be exempted from duty under the Legacy Duty Acts *(i)*. The Customs and Inland Revenue Act, 1881 *(k)*, has also exempted from succession duty any succession the duty on which would be 1*l.* per centum, where the duty has been paid upon the affidavit according to the provisions of the Act; and where the fixed duty of 30*s.* has been paid upon such affidavit *(l)*. The value of an annuity, or of any interest chargeable with duty as an annuity, is to be calculated according to the tables annexed to the Succession Duty Act, as well for the purposes of that Act as of the Legacy Duty Acts *(m)*. By the Succession Duty Act provision is made both in respect of a person exercising a general power of appointment and a person taking under the exercise of a limited power of appointment *(n)*. An interest accruing

(e) 16 & 17 Vict. c. 51, s. 19.

(f) S. 18.

(g) S. 10.

(h) S. 20.

(i) S. 18.

(k) 44 Vict. c. 12, s. 41.

(l) S. 36.

(m) 16 & 17 Vict. c. 51, s. 31. See 36 Geo. III. c. 52, s. 8.

(n) 16 & 17 Vict. c. 51, ss. 4, 33. See 36 Geo. III. c. 52, s. 18, *ante*, p. 330.

Chap. XIV. by survivorship in respect of property vested in two or more jointly is subjected to duty as a succession (*o*); and similarly an increase of benefit accruing to a person on the extinction of a charge by the death of another person, or at a period ascertainable only by reference to death (*p*).

The interest of any successor in monies to arise from the sale of real property under any trust for sale, so far as the same is not chargeable with duty under the Legacy Duty Acts, is to be deemed personal property chargeable with duty under the Succession Duty Act; provided that where such monies are subject to any trust for reinvestment in the purchase of other real property to which the successor would not be absolutely entitled, such monies are to be deemed real property (*q*).

In like manner the interest of any successor in personal property subject to any trust for investment in the purchase of real property to which the successor would be absolutely entitled, so far as the same is not chargeable with duty under the Legacy Duty Acts, is to be chargeable with duty under the Succession Duty Act as personal property; and personal property subject to any trust for investment in the purchase of real property to which the successor would not be absolutely entitled, so far as the same is not chargeable with duty under the Legacy Duty Acts, is chargeable as real property (*r*).

Certain provisions of the Legacy Duty Act, 36 Geo. III. c. 52, relating to the assessment and payment of and exemption from duty, are made applicable to successions under the Succession Duty Act, with the substitution of the tables in the latter Act (*s*).

(*o*) 16 & 17 Vict. c. 51, s. 3.

(*p*) S. 5.

(*q*) S. 29.

(*r*) S. 30.

(*s*) S. 32.

The Commissioners of Inland Revenue are empowered Chap. XIV. in certain cases to compound the duty payable as a succession under the Succession Duty Act, and to enlarge the time for payment of duty (*t*); also they may accept composition for legacy duty under a will (*u*). They may receive the duty in advance, subject to a discount (*x*). And they may commute the duty presumptively payable on a succession in expectancy (*y*); this power is extended and applied also to duties under the Legacy Duty Acts by the Customs and Inland Revenue Act, 1880 (*z*).

A duty has now been imposed upon property belonging to or vested in bodies corporate or incorporate, which escape liability to probate, legacy, or succession duties, by the Customs and Inland Revenue Act, 1885 (*a*), whereby it is enacted that there shall be levied and paid, in respect of all real and personal property which shall have belonged to or been vested in such body during any yearly period ending on the fifth of April, a duty at the rate of 5*l.* per centum upon the annual value, income, or profits of such property accrued to such body in the same yearly period.

(*t*) S. 39.

(*u*) 44 Vict. c. 12, s. 43.

(*x*) 16 & 17 Vict. c. 51, s. 40. The Act applies only to duty under the Succession Duty Act, but in practice the former is treated as extending also

to duty under the Legacy Duty Acts.

(*y*) 16 & 17 Vict. c. 51, s. 41.

(*z*) 43 Vict. c. 14, s. 11.

(*a*) 48 & 49 Vict. c. 51, s. 11, and pt. ii.

Bodies
corporate.

INDEX.

ABATEMENT

of legacies, 308

ABILITY,

representation as to, must be in writing, 238

ABSOLUTE OWNERSHIP,

personal property is the subject of, 3

ACCEPTANCE,

of bill of exchange, 106, 111, 112, 119—122, 128
for honour, 131, 132

ACCEPTANCE AND RECEIPT OF GOODS,

when necessary under Statute of Frauds, 18
what constitutes, 19

ACCOMMODATION, 117. *See* BILLS OF EXCHANGE.

ACCOUNTS. *See* MERCANTILE LAW AMENDMENT ACT, 1856.

ACCUMULATIONS

of income, 5

ACKNOWLEDGMENT. *See* LIMITATIONS, STATUTE OF; SIGNATURE; TENTERDEN'S, LORD, ACT.

of debt barred by the Statute of Limitations, must be in writing,
277, 288
may be made by an agent duly authorised, 278

ACT OF BANKRUPTCY. *See* BANKRUPTCY.

ACTIONS. *See* CONTRACTS.

by and against infants, 37—40
 married women, 43, 44, 274
within what time to be brought, 271—282
cannot be maintained *at law* against executor, 324, 325
 except in the case of a specific legacy to which he has assented,
 324

ADEPTION. *See* LEGACIES.
of specific legacy, 307, 308

ADJUDICATION. *See* BANKRUPTCY .

ADMINISTRATION. *See* EXECUTORS AND ADMINISTRATORS.
statutes of, 287, 288

ADMINISTRATION ACTION, 324. *See* EXECUTORS AND ADMINISTRATORS.

ADMINISTRATOR, 312—325. *See* EXECUTORS AND ADMINISTRATORS.

AGENT. *See* PRINCIPAL AND AGENT.

AGREEMENTS. *See* CONTRACTS.

ALIEN. *See* SHIPS.
may acquire, hold, and dispose of real and personal property, 86
cannot be the owner of a British ship, *id.*

ALIENATION. *See* ASSIGNMENT.
at law, 93

ALLONGE. *See* BILLS OF EXCHANGE.
indorsement written on, 119

ALTERATION
of contract in writing, what evidence necessary for, 29
of bill of exchange, 130
may be made in the capital or name of joint stock companies, 173
but notice thereof must be given to the registrar, 175
may be made in trade-mark with leave of High Court, 207
in the writing of a will, 290

ANIMALS,
domitæ nature are personal property, 1

ANTENUPTIAL DEBTS. *See* HUSBAND ; MARRIED WOMEN ; MARRIED
WOMEN'S PROPERTY ACT, 1882.

ANTICIPATION. *See* MARRIED WOMEN ; MARRIED WOMEN'S PROPERTY
ACT, 1882.
restriction against not interfered with by the Married Women's Pro-
perty Act, 1882 ; 45, 46
unless created by the woman herself, 45, 48, 284

APPROPRIATION OF PAYMENT. *See* LIMITATIONS, STATUTE OF ;
PAYMENT.

ARRANGEMENT OR COMPOSITION. *See* BANKRUPTCY.

with creditors, 243, 245

ARTICLES OF ASSOCIATION. *See* JOINT STOCK COMPANIES.

prescribe regulations for company, 171

may modify or exclude the regulations contained in "Table A." in Schedule to the Companies Act, 1862; 172

ASSIGNMENT,

under Bills of Sale Acts, 63, 67

of book debts, 67

against public policy, not allowed, 94, 95

of choses in action, 93, 94, 100

of bills of lading, 33

of dock warrants, 34

of bills of exchange, 105, 109, 110

of cheques, 135

of dividend warrants, 138

of promissory notes, *id.*

of debentures, 144

of foreign bonds and scrip, 148, 149

of policies of life assurance, 150, 152, 153

of marine assurance, 155, 158, 159

of shares in companies, 164, 165, 172

of patents, 191, 193, 194

of copyright in designs, 197, 199

of trade-marks, 207

of copyright in books, 211, 213, 215

in paintings, drawings, and photographs, 222

ASSOCIATION. *See* ARTICLES OF ASSOCIATION; MEMORANDUM OF ASSOCIATION.

ASSURANCE. *See* FIRE ASSURANCE; LIFE ASSURANCE; MARINE ASSURANCE.

ATTACHMENT OF DEBTS. *See* DEBTS.

AUCTION,

goods seized under an execution for over £20 must be sold by, 226

BAILMENT,

goods may be transferred by, 79

different sorts of, *id.*, 80

depositum, 80

commodatum, *id.*

locatio et conductio, *id.*

vadium, *id.*

locatio operis faciendi, *id.*

mandatum, *id.*, 81

BAILMENT—*continued*.

- liability of bailee, 80, 81
- goods found, 81, 82
- action for conversion or detention, 82

BANK HOLIDAY,

- when bills of exchange fall due on, 111.

BANK OF ENGLAND. *See* DISTINGAS; FUNDS.

- stocks or funds standing in the name of a married woman in, are generally presumed to be for her sole use, 97, 98
- notice in lieu of *distringas* may be served on, 98, 99
 - effect of, 99, 100
- when injunction may be obtained against, 100
 - when stop order, *id.*
- may require all the executors who have proved to concur in transfer of stock, 299
- legacies to infants or persons abroad, to be paid into, 309

BANKERS. *See* BILLS OF EXCHANGE; CHEQUES.

- protection to, in paying bills of exchange, 116
 - in paying cheques, 137, 138
- effect of failure of, with regard to cheques, 135
- revocation of authority of, 136

BANKRUPTCY,

- acts of, 239, 240, 259
 - may be committed by married women, 240, 241
- estate of bankrupt becomes distributable among his creditors, 239, 251
- in case of partners, 241, 247, 248
- how proceedings are commenced, 241
 - in what Court, *id.*
 - who may present petition, *id.*
 - and under what circumstances, *id.*
- when official receiver appointed, 242
 - duties of, 242—244
- when receiving order may be made, 242, 261
- first meeting of creditors, 243
- creditors may agree on composition or arrangement subject to approval of Court, 243, 245
- provisions of composition, how enforced, 243
- under what circumstances annulled, *id.*
- adjudication, 243, 244, 245
- appointment of trustee, 244
 - of committee of inspection, *id.*
 - until appointment, official receiver is trustee, *id.*
 - may sell bankrupt's property, 244, 245

BANKRUPTCY—*continued.*

- discharge of bankrupts, 245, 246
 - effect of, *id.*
 - may be subject to conditions, 246
- what debts are provable in, *id.*
- what are not, *id.*
- mode of proof, 249
- estimate to be made of contingent debts, 246, 247
- rule as to mutual debts or credits, 247
- priority of debts, *id.*
- rule as to joint and separate estates in case of partners, 247, 248
 - loans by wife for purpose of husband's business, 248, 249
- power of landlord to distrain, 249
- secured creditors, definition of, 250
 - powers of, 249, 250
- when bankruptcy commences, 251
- what property is divisible among creditors, *id.*
- what powers of bankrupt may be exercised by trustee, 251, 252
 - cannot be exercised after bankrupt's death, 251
- tools and clothing under £20 protected, 252
- goods belonging to other persons not included among bankrupt's property, *id.*
 - unless in his order or disposition in his trade or business, 252, 253
 - meaning of reputed ownership, 253—255
- registered mortgage of ship not affected by act of, 255
- when Court may order bankrupt's salary, income or pension, or part thereof, to be paid to creditors, 255
- certain voluntary settlements may be avoided, 255, 256
 - but not one made before and in consideration of marriage, 256
 - or in favour of a purchaser for valuable consideration, *id.*
 - or on wife or children of property accrued in right of wife, *id.*
 - or a policy of assurance for benefit of wife and children, 257
 - or ordinary covenant to pay to trustees of marriage settlement, *id.*
- statute of Elizabeth against fraudulent conveyances, 257—259
- stranger may convey interest in property to another terminable on his bankruptcy, 258, 259
 - but similar settlement cannot be made by the person himself, 259
- fraudulent preference, definition of, 259—261
- estate of person dying insolvent may be administered in, 261, 262
- if bankrupt dies, proceedings to be continued as if he were alive, 262
- appointment of new trustee in place of one becoming bankrupt, *id.*
- receiving order not to be made against corporations, *id.*
- how far rules of, apply to the winding-up of companies, 266
- the Statute of Limitations ceases to run against creditor, on the bankruptcy of debtor, 282

BANKRUPTCY—*continued.*

bankrupt may be executor though not administrator, 298, 319
but a receiver of the testator's estate will be appointed, 298

BANKRUPTCY ACT, 1882. *See* BANKRUPTCY.

sale by sheriff of goods under execution exceeding £20 must be by
public auction, 226

BARGAIN AND SALE,

effect of, 13, 14, 31
time of delivery and of payment, 31

BASTARD,

owner of personalty dying intestate, 316, 317
administration will be granted to Solicitor of the Treasury for
the use of the Crown, *id.*, *id.*

BENEFICE,

bankrupt's right of nomination to, does not vest in his trustee, 251

BENEFICED CLERKS. *See* CLERGYMEN; SEQUESTRATION.BETTING. *See* GAMING.BILLS OF EXCHANGE. *See* CHEQUES; DIVIDEND WARRANTS; I.O.U.;
PROMISSORY NOTES.

form of, 105
are negotiable, *id.*
were assignable from an early period, *id.*
holder could sue in his own name, *id.*
definition of, 106, 107
 drawer, 106
 drawee, *id.*
 acceptor, *id.*
 indorser, *id.*
 indorsee, *id.*
 holder, *id.*

law relating to, codified by Bills of Exchange Act, 1882; 107
rules of common law, and in bankruptcy apply to, *id.*
are inland and foreign, 108, 132—135

 difference between, 108

payee, who may be, *id.*

what are negotiable, 109, 110

when payable, 110, 111, 120, 121

days of grace, 111

when day of payment falls on Sunday, Christmas Day, Good Friday,
&c., *id.*

BILLS OF EXCHANGE—*continued.*

- not invalid by being ante-dated, post-dated, or dated on Sunday, 111
- referee in case of need, *id.*
- acceptance, definition and requisites of, 111, 112
 - may be conditional, 112, 120
- delivery, 112
- skeleton bill, inchoate instruments, 113
- parties to, who may be, *id.*
 - infants, 113, 114
 - corporations, 113, 114, 115
- signature is essential to, 115
 - per procuration, 116
 - by an agent, *id.*
 - sans recours*, *id.*
 - estoppel as to, 115
 - ratification, *id.*
 - cannot be to a forgery, *id.*
 - protection to bankers as to, 116
- consideration, *id.*
 - is presumed, 116, 117
 - what is, 117
 - effect of illegality in, *id.*
- accommodation bills, definition of, *id.*
 - provision in Bills of Exchange Act, respecting, 117, 118
- "holder in due course," definition of, 118
 - rights and powers of, 121
- negotiation, what amounts to, 119
- indorsement, *id.*
 - sometimes written on an "allonge," *id.*
 - form of by married women, *id.*
 - may be conditional, 120
 - but condition may be disregarded by payee, *id.*
 - in blank, effect of, *id.*
- negotiation of, when overdue or dishonoured, *id.*
- when bill payable on demand is overdue, 120, 121
- presentment for acceptance, 121, 122
 - for payment, 122—124
 - not necessary as against acceptor, 128
- effect of dishonour by non-payment, 124
- notice of dishonour, 124—126
 - when dispensed with, 125
 - when to be given, 125, 126
- protest and noting, 126, 127, 132
- when to be exhibited and delivered up, 128
- liabilities of parties, 128, 129
 - acceptor, 128
 - for honour, 131, 132

BILLS OF EXCHANGE—*continued*.

- liabilities of drawer, 128
 - indorser, *id.*
 - stranger, 129
- damages on dishonour, *id.*
 - interest, *id.*
 - expenses of noting and protest, *id.*
- discharge of, 130
- alteration, effect of, *id.*
 - may render fresh stamp necessary, *id.*, 131
- acceptance for honour, 131, 132
- payment for honour, 132
- drawn in a set, *id.*, 133
 - liability of indorser or acceptor, 133
- conflict of laws respecting, 133—135

BILLS OF EXCHANGE ACT, 1882. *See* BILLS OF EXCHANGE; CHEQUES;
DIVIDEND WARRANTS; I.O.U.; PROMISSORY NOTES.

BILLS OF LADING. *See* SHIPS.

- what they are, 90
- indorsement of, defeats right of stoppage *in transitu*, 33, 34
- are excluded from the operation of the Bills of Sale Acts, 63

BILLS OF SALE,

- meaning of, 63, 64
- transfer of goods by, 61
- Acts regulating, *id.*, 62, 64 *et seq.*
- what "personal chattels" are included in, 62
- requisites of, under Act of 1882, 64 *et seq.*
- registration of, must be renewed every five years, 65
- seizure and sale of goods under, 67, 68, 71
- form of, 68, 69
- consideration for, must be "truly set forth," 74—76
- priority in case of two or more, 76
- entry of satisfaction on registered copy, *id.*
- transfer of ship or share of ship, 88

BILLS OF SALE ACT, 1882. *See* BILLS OF SALE.

- debentures need not be registered under, 147
- transfer of ship or share of ship, not within, 63

BOOKS. *See* COPYRIGHT.

BOTTOMRY,

- definition of, 157

BOVILL'S ACT. *See* LOANS; PARTNERS.

BUILDING SOCIETIES,

are to be wound up in a County Court, 179

BUSINESS OF TESTATOR,

liability of executor while carrying on, 311

CALLS. *See* JOINT STOCK COMPANIES.

may be made of capital in joint stock companies, 173, 174

when interest payable on, 269

CAMPBELL'S, LORD, ACT,

for compensating the families of persons killed by accidents, 304

CARRIER,

liability of, 80, 81

CERTIFICATE,

under common seal, is *primâ facie* evidence of membership in joint stock companies, 175

CHAMPERTY,

definition of, 95

assignment partaking of the nature of, not permitted, *id.*

CHARGING ORDER,

on debtor's interest in funds or shares, may be obtained by judgment creditor, 225, 228

CHARITY,

when legacy to, valid, 306

CHARTER,

companies may be incorporated under, 162

grants of patents contained in, 180

CHARTER PARTY,

definition of, 90

CHATTELS. *See* CHOSSES IN ACTION; CHOSSES IN POSSESSION; PERSONAL PROPERTY.

CHATTELS REAL,

are not within the scope of this work, 1

on death of owner, devolve upon his personal representative and not his heir, 285

CHATELS REAL—*continued*.

- acquired by wife after 1882, no longer vest in husband, 296
- legatee of, cannot enter into possession without executor's consent, 306, n. (u)

CHEQUES,

- Bills of Exchange Act, 1882, applies to, 135
- definition of, *id.*
- effect of non-presentment in reasonable time, *id.*
 - what is reasonable time, *id.*
- effect of discharge of drawer, *id.*, 136
- banker's authority to pay, 136
 - how revoked, *id.*
- when banker liable for dishonour, *id.*
- crossing of, 136—138
 - different modes of, 136, 137
 - effect of, 137, 138
 - title of holder of crossed cheque marked "not negotiable," 137
 - protection to bankers in paying, *id.*, 138

CHILDREN. *See* INFANTS.

- application of income for the maintenance and education of, 4
- cannot claim the benefit of their mother's "equity to a settlement" after her death, 295
- portions to, 305
- shares of, under the Statute of Distributions, 322, 323

CHOSSES IN ACTION. *See* BILLS OF EXCHANGE; CONVEYANCING AND LAW OF PROPERTY ACT, 1881; COPYRIGHT; DEBENTURES; DEBTS; FUNDS; JOINT STOCK COMPANIES; MARRIED WOMEN'S PROPERTY ACT, 1882; PATENTS; POLICIES OF ASSURANCE.

- examples of, 1
- are mentioned in definition of property in the Conveyancing Act, 1882, *id.*
- nature of, 92
- were not assignable at law, 93
 - but were in equity, 94
- assignments against public policy not permitted, *id.*
- officers' full and half pay not assignable, 95
- pensions sometimes alienable, *id.*
- assignments not permitted which partake of the nature of maintenance and champerty, *id.*
- assignment is subject to equities affecting its subject matter, 96
- notice of assignment must be given, 97, 100
- may be assigned at law under Judicature Act, 1873, 100
- assignee of debt may sue in his own name, 101
 - but mortgagee in name of mortgagor, *id.*, 102
- in many instances do not pass to executor, 303, 304

- CHOSSES IN POSSESSION. *See* BAILMENT; BILLS OF SALE; CONTRACT;
 LIEN; PAWN OR PLEDGE; SHIPS.
 are mentioned in the definition of property in the Conveyancing Act,
 1882; 1
 definition of, 2
 transfer of, 8
 by delivery, *id.*
 title, *id.*
 market overt, *id.*
 Larceny Act, 1861; 9
 horses, 11
 Mercantile Law Amendment Act, 1856; 12
 by contract, 13
 declaration of trust, *id.*
 executory, *id.*
 executed, or bargain and sale, *id.*
 Statute of Frauds, 14
 Lord Tenterden's Act, 15
 application of statutes, 16
 fixtures, emblements, *id.*, 17
 growing trees, 17
- CHRISTMAS DAY,
 when bills of exchange fall due on, 111
- CLERGYMEN,
 sequestration of benefices of, for debt, 226, 227
- CO-DEBTORS. *See* LIMITATIONS, STATUTE OF.
- COMPANIES. *See* JOINT STOCK COMPANIES.
- COMPANIES CLAUSES CONSOLIDATION ACT, 1845
 applies to all companies thereafter incorporated by Act of Parliament,
 164
 objects and provisions of, 164—168
 contracts by companies incorporated under, 51
 mortgages and charges affecting the property of such companies must
 be registered, 148
 shares in such companies are personal property, 164
 are assignable, 164, 165
 when fully paid up, may be converted into stock, 165
 effect of such conversion, 165—168
 transfer of, must be by deed, 164, 172
- COMPOSITION OR ARRANGEMENT. *See* BANKRUPTCY.
 with creditors, 243, 245

CONFLICT OF LAWS,

respecting bills of exchange, 133, 134

CONSENT

of executor to legacy, 306

CONSIDERATION,

definition of, 117, 233

necessary to a contract, 13, 116

presumed in a deed, *id.*, *id.*

and in a bill of exchange, 117

must not be illegal, 53—56

for guaranty need not appear, 22 n. (x), 233

for bill of sale must be truly set forth, 74—76

CONTINGENT LEGACY. *See* LEGACIES.CONTRACT. *See* CHOSSES IN POSSESSION; DRUNKARDS; FRAUDS, STATUTE OF; INFANTS; LUNATICS; MARRIED WOMEN; MEMORANDUM IN WRITING; PRINCIPAL AND AGENT; PRINCIPAL AND SURETY; SIGNATURE; VENDOR AND PURCHASER.

for sale of goods, 13

may be executory or executed, *id.*

of the value of £10 or upwards must be in writing, *id.*, 15

unless the buyer accepts part of the goods, or gives something in earnest, 15

fixtures, emblements, 16, 17

growing trees, 17

alternative proofs of, 18

acceptance and receipt of part, *id.*, 19

earnest or part payment, 19

note or memorandum in writing, 20

not to be performed within a year, 27

who may be parties to, 36, 113

who are incompetent, 36, 37

infants, 37, 113

married women (at common law), 37, 42

persons *non compos mentis* including drunkards, *id.*, 41, 42

with corporations, 49, 113, 114

under Public Health Act, 1875; 51

may be with two or more jointly, 52

must not be illegal, 53

or against public policy, 53—56

by way of gaming, cannot be enforced, 56

against Tippling Acts cannot be enforced, 58, 59

sales on Sunday, 59, 60

CONTRIBUTION. *See* PRINCIPAL AND SURETY.

between co-sureties, 236, 237

CONTRIBUTORY. *See* JOINT STOCK COMPANIES.

CONVERSION. *See* BAILMENT.

CONVEYANCING AND LAW OF PROPERTY ACT, 1881,

gives trustees power to apply income for maintenance of children, 4
power given to two or more by, may be exercised by the survivors, 7
when the Court may bind a married woman's interest in any property, 49

enables a married woman to appoint an attorney for certain purposes, *id.*

effect on contracts with two or more jointly, 52

effect in vesting property on appointment of new trustees, 103

conveyance of a chose in action by a person to himself jointly with another person, *id.*

enables executors to compromise, settle or abandon any debt, 311, 312
but gives no such power to administrators, 312

CONVEYANCING ACT, 1882,

definition of "property" in, 1

COPYRIGHT. *See* DESIGNS.

in books, 210—217

always existed in unpublished works, 210, 211

statutes affecting, 211—213, 215

doubt of existence of at common law after publication, 211

extent and duration of, 213

perpetual in certain universities, &c., with respect to certain books, 212

definition of "book," *id.*

"dramatic piece," *id.*

"copyright," 213

publishers and proprietors of encyclopædias, periodicals, &c., 214

right of performing dramatic piece or musical composition, 214, 215

penalties for infringing, 215

registration of, *id.*, 216

piracy, 216

damages for, *id.*

time of commencement of actions, *id.*, 217

is personal property, 217

what books are prohibited to be imported, *id.*

in lectures, *id.*, 218

right of publication belongs to authors by statute, 217

but only under certain conditions, 218

no protection against re-delivery, *id.*

in engravings, etchings, prints, and lithographs, *id.*, 219

statutes affecting, 218

duration of, 219

penalties and damages for infringing, *id.*

COPYRIGHT—*continued.*

- in sculpture, 219, 220
 - statutes affecting, *id.*
 - duration of, *id.*
 - damages for infringement of, 219
- in paintings, drawings, and photographs, 220—222
 - statute affecting, 220
 - duration and extent of, 220, 221
 - registration of, 221
 - piracy, *id.*
 - penalties and damages for, 221, 222
 - is personal property, 222
 - assignment of, *id.*
- in literary and artistic works first published abroad, 222, 223

CORPORATIONS. *See* JOINT STOCK COMPANIES.

- could formerly only contract under seal, 49, 113
 - exceptions in the case of trading corporations, 49, 50
 - under the Companies Acts, 51
 - under the Public Health Act, 1875, *id.*
- when capable of being parties to bills of exchange, 113—115
- receiving order in bankruptcy not to be made against, 262
- debts extinguished on dissolution of, *id.*
- how dissolved, 262, 263
- duty payable on property of, 335

CORPOREAL THINGS. *See* CHOSSES IN POSSESSION.CO-SURETIES. *See* PRINCIPAL AND SURETY.

- contribution between, 236, 237

COUNTY COURT,

- order may be made in, for the delivery of goods not exceeding £50 in value, 82
- building societies, and industrial and provident societies are to be wound up in, 179
- High Court may order proceedings in winding-up joint stock companies to be had in, 178, 179
- judgments of, how enforced, 229, 230
 - two years after execution cannot issue without leave, 230
 - interest is payable on, 270 n. (*kk*)
- jurisdiction of, in bankruptcy, 241, 261, 262
- probate of wills in, 297
- administration suite in, 325, 326
 - may be transferred to the Chancery Division, 326

COUNTY DEBENTURES ACT, 1873,

- debentures may be issued under, 149, 150
 - may be payable to bearer, 150
 - coupons to be attached to, *id.*
 - register of, to be kept, *id.*

CREDITORS. *See* BANKRUPTCY; ELIZABETH, STATUTE OF.

effect of legacies to, 305

legacies by, *id.*

when administration will be granted to, 317, 318

CROWN. *See* BASTARD.

rights of officers of, with respect to patents, 191

priority of debts due to, 231

CUSTOM OF TRADE,

annexed to terms of contract, 29

how far limited by law, 29—31

when the doctrine of "reputed ownership" in bankruptcy is excluded
by, 254, 255

CUSTOMS AND INLAND REVENUE ACTS,

duties payable on transmission of personal property, 328—335

on affidavit for probate or letters of administration, 328, 329

accounts in respect of *donationes mortis causâ*, 329, 330

legacies and successions, 330—335

property vested in bodies corporate, 335

Legacy Duty Acts, 330, 331

Succession Duty Act, 331—335

DAMAGES. *See* BILLS OF EXCHANGE; COPYRIGHT; DESIGNS; TRADE
MARKS.

when interest may be recovered as, 129

unliquidated, not provable in bankruptcy, 246

DEATH. *See* DEVOLUTION OF PROPERTY ON DEATH; EXECUTORS AND
ADMINISTRATORS.

of parties entitled or liable to execution, 230

of debtor before satisfaction of judgment, 231

leave must be obtained to issue execution, 230, 231

priority of satisfaction of judgment debts, 231

of other debts, 231, 232

of person dying insolvent, 261, 262

of bankrupt, 251, 262

DEBENTURES. *See* COUNTY DEBENTURES ACT, 1873; FOREIGN BONDS;
JOINT STOCK COMPANIES; RAILWAY COMPANIES.

what are, 142, 143

different kinds of, 142

do not require a stamp, *id.*power of companies to issue, *id.*

may be in the form of stock, 143

DEBENTURES—*continued*.

- assignability of, 144—147
- need not be registered under the Bills of Sale Act, 1882; 147
- may be issued under County Debentures Act, 1873; 149, 150
- also under Mortgage Debenture Act, 1865; 150

DEBTS. *See* BANKRUPTCY—EXECUTION; INTEREST—MARRIED WOMEN; PAYMENT; PRINCIPAL AND SURETY.

- are choses in action, 1
- assignment of, 93, 96, 97
- personal property liable to, 224
- money ordered to be paid by any judgment, included in, *id.*
- mode of enforcing judgments, 224—232
 - in case of judgment against a firm, 225
 - writ of *fiery facias*, 225, 226
 - what may be seized under, 226
 - debts due by third persons to debtor may be attached, 227
 - by a garnishee order, *id.*
 - proceedings when garnishee does not pay, 227, 228
 - charging orders on debtor's interest in funds, stock, or shares, 228
 - equitable execution by appointment of receiver, 228, 229
 - writ of sequestration, 229
 - writ of delivery, *id.*
 - judgments in County Courts, 229, 230
 - when leave to issue execution must be obtained, 230, 231
 - on death of debtor, 231
 - priority of debts, 231, 232, 247, 305
- guaranties, 232—238
 - what are, and what are not provable in bankruptcy, 246
- payment of, by executors, 304, 305
- when satisfied by legacies, 305, 306
- compounding by executors, 311, 312

DEED. *See* SEAL.

- consideration implied in, 13, 116

DELIVERY,

- of goods, 8
- of bills of exchange, 112
- of promissory notes, 139
- writ of, for delivery of property, 82, 225, 229
 - mode of enforcing, 229

DEMONSTRATIVE LEGACIES,

- definition of, 308
- abate with specific, not with general legacies, *id.*

DESIGNS. *See* COPYRIGHT ; PATENTS ; TRADE MARKS.

- statutes protecting, 195, 196
- copyright in, 196
- meaning of "design," *id.*
 - "copyright," 196, 197
 - "proprietor," 197
- duration of copyright, 198, 199
- effect of exhibition, 198
- registration of, 197, 198
- register of, what to be entered on, 199
 - no notice of any trust, *id.*
- not open to general inspection during duration of copyright, 199, 200
- piracy of, 200, 201
 - penalty and damages for, 201
- penalty for falsely representing, as registered, 201
- arrangements for the protection of foreign and colonial, 208, 209

DETENTION. *See* BAILMENT.

DEVASTAVIT. *See* EXECUTORS AND ADMINISTRATORS.

DEVOLUTION OF PROPERTY ON DEATH. *See* CUSTOMS AND INLAND REVENUE ACTS ; DISTRIBUTIONS, STATUTE OF ; DEATH ; EXECUTORS AND ADMINISTRATORS ; WILL.

- personal property devolves upon personal representative, 2, 3, 285, 303
 - but not a *donatio mortis causâ*, 285
- power of bequest has always existed, 285, 286
 - but originally not to all a man's personal estate, 286
- provision as to, in Magna Charta, *id.*
 - as to citizens of London in 11 Geo. I. c. 18, *id.*
- in case of intestacy the king was entitled to seize the goods, *id.*
 - afterwards the ordinary, 286, 287
 - for pious uses, 287
- the ordinary afterwards had the probate of wills, *id.*
- Prerogative Courts, *id.*
- statutes of administration, 287, 288
- jurisdiction of Ecclesiastical Court transferred to Probate Court, 288
 - then to High Court, and Probate, Divorce and Admiralty Division, 288, 289
- power of executor and administrator, whence derived, 289
- all personal property may be bequeathed by will, *id.*
 - including property over which testator has a power of appointment, 290
- formalities requisite in a will, *id.*
- meaning of failure of issue, *id.*
- married women may dispose of property by will, 291, 292
- husband's interest in wife's property, 292—294
- on death of wife, her children have no "equity to settlement," 295
- duties to be paid on, 328—335

DISABILITIES. *See* CONTRACT; LIMITATIONS, STATUTE OF.

- to sue, so as to prevent the Statute of Distributions beginning to run,
273, 275
- from being a *feme covert*, 273
- being under twenty-one years of age, *id.*
- being *non compos mentis*, *id.*
- the debtor being beyond the seas, 275, 276

DISCHARGE. *See* BANKRUPTCY; PRINCIPAL AND SURETY.

- of surety, 235, 236
- of bankrupt, 245, 246

DISHONOUR. *See* BILLS OF EXCHANGE.

- notice of, 124—126

DISSOLUTION OF CORPORATIONS. *See* CORPORATIONS.DISTRESS. *See* BANKRUPTCY; LANDLORD.DISTRIBUTIONS, STATUTE OF. *See* EXECUTORS AND ADMINISTRATORS; KIN; KINDRED.

- settles the devolution of personal property in cases of intestacy, 2
- doubt as to the effect of, on husband's right to wife's estate, 292, 296
- administrator must distribute estate according to, 322—324.
- provisions of, 323, 324

DISTRINGAS,

- abolished by Rule of Supreme Court in 1880, 99
- notice in lieu of, 98—100, 228
- effect of, 99, 100

DIVIDEND WARRANTS,

- Bills of Exchange Act, 1882, applies to, 138
- but does not affect the validity of any usage relating to, *id.*

DOCK WARRANTS,

- indorsement of, defeats right of stoppage *in transitu*, 34

DOMICILE,

- of owner, regulates succession to personal property, 3

DONATIO MORTIS CAUSA,

- does not go to personal representative of deceased, 285
- but becomes the absolute property of the donee, *id.*
- definition of, *id.*
- when liable to duty, 329, 330

DRAMATIC PIECES. *See* COPYRIGHT.

- DRAWER,
of bill of exchange, 106, 128
- DRAWINGS. *See* COPYRIGHT.
- DRUNKARDS,
not liable on contracts made during a state of intoxication, 41
contracts by, are not void but voidable, 42
- DUTIES. *See* CUSTOMS AND INLAND REVENUE ACTS.
payable on the transmission of personal property, 328—335
- EARNEST OR PART PAYMENT,
effect of under Statute of Frauds, 19
- ECCLESIASTICAL GOODS,
writs of *fi. fa.* or sequestration against, 226
- EDUCATION,
of infants, application of income for, 4
- ELIZABETH, STATUTE OF,
avoids as against creditors, all gifts, alienations, &c., made to defraud
them, 257—259
- EMBLEMENTS. *See* FRAUDS, STATUTE OF ; TENTERDEN'S, LORD, ACT.
- ENCYCLOPÆDIAS. *See* COPYRIGHT.
- ENFORCEMENT OF DEBTS. *See* DEBTS.
- ENGRAVINGS. *See* COPYRIGHT.
- EQUITABLE EXECUTION. *See* EXECUTION.
how obtained, 228, 229
- EQUITY,
enforces the duty of trustees, 4
rules of, to prevail, when in conflict with those of law, 6
chooses in action assignable in, 94, *et seq.*
analogy between, and law with regard to the Statute of Limitations,
273
- EQUITY TO SETTLEMENT.
wife's, 295
cannot be claimed by children after her death, *id.*
- ESTATE.
personal property cannot be held for an, 3, 5

ESTOPPEL.

as to signature to bill of exchange, 115

ETCHINGS. *See* COPYRIGHT.

EVIDENCE.

of sale of goods, required under the Statute of Frauds, 13, 15—28
 parol, cannot be received to vary written contract, 29.
 but may, to explain it, *id.*
 or to show that principal is also liable on contract signed
 by agent, 24
 of mercantile customs may be given, 29
 of ownership of shares in joint stock companies, 175
 of patents, 193
 of designs, 199
 of trade-marks, 207

EXECUTED AND EXECUTORY CONTRACTS. *See* CONTRACTS.

EXECUTION.

in case of judgment against a firm, 225
 equitable, 228, 229
 of County Court judgments, how enforceable, 229, 230
 when leave must be obtained to issue, 230, 231
 after lapse of six years from judgment in High Court, 230
 or two years in a County Court, *id.*
 in case of death of parties entitled or liable to execution, *id.*, 231
 in case of husband on judgment for or against wife, 230
 on judgment of assets *in futuro*, or *quando acciderint*, *id.*
 against shareholders or public officer, upon judgment against a
 joint stock company, *id.*, 231

EXECUTORS AND ADMINISTRATORS. *See* CUSTOMS AND INLAND
 REVENUE ACTS—DEATH—DEVOLUTION OF PROPERTY ON DEATH
 —LEGACIES.

when concurrence of, is required before the Court will administer the
 estate of a deceased insolvent, 261, 262
 may retain debts barred by the Statutes of Limitations, as against a
 general legatee or one of the next of kin, 280
 may retain debts due to themselves though barred by the statute, 282
 power of executor is derived from the will itself, 289
 of administration from the Court, *id.*
semble husband must take out administration to wife, 296
 where no executor, administration granted, with will annexed, 297
 also where infant is sole executor, *id.*, 298
 or where executor is abroad, 298
 married woman may now be executrix, *id.*
 bankrupt may be executor though not administrator, *id.*, 319
 but a receiver of the estate will be appointed, 298

EXECUTORS AND ADMINISTRATORS—*continued.*

appointment of executors, *id.*, 299

one may act for all, 299

but Bank of England may require all who have proved to join in transfer of stock, *id.*

all must be parties to an action, *id.*

protection of executor against acts of his co-executors, *id.*, 300

where one dies the whole interest survives to the other or others, 300

interest of sole or sole surviving executor may be transmitted to his executor, 300

but not to his administrator, *id.*, 301

but there must be administration *de bonis non*, 301, 319

interest of administrator cannot be so transmitted, 300

executor may act before probate, 301, 313

but administrator may not, 313

and till his appointment the estate vests in the Judge of Court of Probate, *id.*

what constitutes an executor *de son tort*, 301

executor may renounce probate, 301—303

but not if he has proved the will or acted, 303, 313, 314

effect of renunciation, 301, 302

before and after citation, 302

all goods and chattels of deceased go to executor, 303

but not all choses in action, *id.*

when executors can sue for damage done to the property of deceased, 303, 304

Lord Campbell's Act, 304

funeral expenses and costs of proving will are to be paid first, 301, 304

debts to be paid next, 304, 305

priority of debts, 231, 305

executor may prefer one creditor to others of equal degree, 305

may retain debt due to him in preference to all other creditors of equal degree, *id.*

is accountable for his own debt, 306

legacies, 305—311

are liable for a *devastavit*, 311

when carrying on business of testator, are personally liable to creditors, *id.*

executors may compromise, settle, or abandon any debts, *id.*, 312

but no such power is given to administrators, 312

no one compelled to be administrator, 313, 314

who entitled to administration, 314—317

widow or next of kin, 314, 315

how degrees of kindred are reckoned, 315, 316

in case of a bastard, the solicitor to the Treasury, 316, 317

when all the next of kin are abroad, 317

creditor, if none of kindred will administer, *id.*, 318

EXECUTORS AND ADMINISTRATORS—*continued.*

- special and limited administration, 318, 319
- if two administrators, and one dies, the office will survive to the other, 319
- when sole administrator dies, there must be administration *de bonis non*, *id.*
- administration, *pendente lite*, when granted, 298, 319
 - durante absentia*, when, 298, 320
 - cum testamento annexo*, 297, 298
 - durante minore etate*, 298, 319
- administration bond required, 320—322
 - regulations respecting, 321, 322
- duties of administrator similar to those of executor, 322
- administrators must distribute estate according to the Statute of Distributions, 322—324
 - special customs in London and York abolished, 324
- when action can be maintained for legacy, *id.*
 - suit in equity for administration, *id.*, 325
 - must be brought in the Chancery Division, 325
- jurisdiction of the County Court, *id.*, 326
- promise by executor to pay debt of deceased, 326, 327
 - not valid unless there be a good consideration for it, 326
 - nor unless it be in writing, *id.*, 327
 - and the consideration appear on the face of the writing, 327
- limitation of actions, 327
- when money in the hands of, may be paid into Court, *id.*, 328
- may apply to the Court or a Judge for advice, 328
- duties to be paid by, 328—335

EXHIBITION.

- effect of, on application for patent, 184, 185
- for copyright in design, 198

FACTOR.

- liability of, 81

FACTORS ACTS.

- provision in, as to the holders of documents of title, 34
- protect persons with whom goods are pledged, 79

FALSE PRETENCES,

- sale of goods obtained by, 11

FALSE REPRESENTATION,

- of articles being patented, 195
- of designs being registered, 201

FINDER OF GOODS.

duty of, 81, 82

FIERI FACIAS.

writ of, 225—227

what may be seized under, 225, 226

title to goods acquired *bonâ fide* before actual seizure and without notice, protected, 226

sale of goods under execution exceeding 20%. must be by public auction, 226

when sheriff returns there are no buyers, creditor may sue out *venditioni exponas*, 226

when sequestration may issue against beneficed clerk, 226, 227

FIRE ASSURANCE,

is a contract of indemnity, 160

policies of, are not assignable, *id.*

assurer must be informed of all material facts respecting the insurance, *id.*

offices may cause insurance money to be laid out in re-instating or repairing the premises burnt down or damaged by fire, *id.*, 161

FIXTURES. *See* FRAUDS, STATUTE OF; TENTERDEN'S, LORD, ACT.

tenants, are personal property, 1

contracts for the sale of, 16

FOREIGN BONDS,

how far negotiable in this country, 148

scrip issued before bond, 149

FOREIGN LAWS. *See* CONFLICT OF LAWS.

FOREIGN VESSEL. *See* PATENTS.

use of invention for the purposes of navigation of, 191

FORGERY,

there can be no ratification to, 115

FRAUD. *See* LIMITATIONS, STATUTE OF.

FRAUDS, STATUTE OF. *See* EARNEST; EVIDENCE; MEMORANDUM IN WRITING; PART PAYMENT; TENTERDEN'S, LORD, ACT.

provides that delivery of writ to sheriff does not change the ownership of property, 12, 13

applies to the sale of goods of the value of 10%. or upwards, 13, 15

evidence required under, 13, 15—28

to contracts for the sale of fixtures and emblements, 16

to contracts not to be performed within one year, 27

FRAUDS, STATUTE OF—*continued.*

- must be pleaded, 28
- applies to promises to answer for the debt of another, 232
- gives husband right to the administration of wife's personal estate, 292, 296
- applies to promise by executor to pay debt of deceased, 326, 327

FRAUDULENT CONVEYANCE. *See* BANKRUPTCY.

under the Statute of Elizabeth, 257—259

FRAUDULENT PREFERENCE. *See* BANKRUPTCY.

FRIENDLY SOCIETIES,

priority of debts due to, by their officers, 231

FUNDS. *See* STOCK.

- when in the names of two trustees, belong legally to the survivor, 7
 - though he may be responsible to others in equity, *id.*
- standing in the name of a married woman are generally presumed to be for her sole use, 97, 98
- transfer of, restrained by notice in lieu of *distringas*, 98—100
- charging order on debtor's interest in, 228

GAMING,

- contracts by way of, cannot be enforced, 56
 - exception to this rule, *id.*
- commission agent cannot refuse to hand over winnings received by him, 57

GARNISHEE. *See* DEBTS.GIFT. *See* LEGACIES; PORTIONS.

mere verbal, without delivery, will not pass property, 8

GOOD FRIDAY,

when bills of exchange fall due on, 111

GUARANTY. *See* PRINCIPAL AND SURETY.

consideration for, need not appear, 22, n. (x), 233

HALF BLOOD,

- in the same position as whole blood, with respect to personal property, 316
 - but not as to right to administer, *id.*

HEALTH. *See* PUBLIC HEALTH ACT, 1875.

HEIR

does not take personal property, 2, 285

HIRE

of goods by bailee, 80
of furniture in hotels, 254, 255

HOLDER. *See* **BILLS OF EXCHANGE.**

in due course, definition of, 118
rights of, 118, 121

HORSES,

provisions as to the sale of, 11, 12
sale of, when stolen, *id.*

HUSBAND. *See* **MARRIED WOMEN ; MARRIED WOMEN'S PROPERTY ACT,** 1882.

when liable for wife's antenuptial debts, 47, 265, 282—284
interest of, in wife's property at her death, 292—294
semble he must take out letters of administration, 296

IGNORANCE. *See* **LIMITATIONS, STATUTE OF.**

of fraudulent concealment of cause of action, 277

ILLEGAL CONTRACTS. *See* **BILLS OF EXCHANGE ; GAMING ; PUBLIC POLICY ; SUNDAY ; TIPLING ACTS.**

cannot be enforced, 53, 54
what constitutes illegality, 53—55
when money paid under, may be recovered, 53
when not, *id.*, 54
assignments partaking of the nature of maintenance and champerty.
are, 95

ILLEGITIMACY. *See* **BASTARD.****INCORPORATION OF COMPANIES,** 162, 172. *See* **COMPANIES CLAUSES CONSOLIDATION ACT, 1845 ; JOINT STOCK COMPANIES.****INCORPOREAL THINGS.** *See* **CHoses IN ACTION.****INDEMNITY.** *See* **PRINCIPAL AND SURETY.**

a promise of, need not be in writing, 233
of executors against acts of their co-executors, 299
of trustees against acts of their co-trustees, 299, 300

INDORSEMENT

- of bills of lading and dock warrants, defeats the right of stoppage *in transitu*, 33, 34
- of bills of exchange, 105, 106, 119, 128
 - by married women, 119
- of dividend warrants, 138
- of promissory notes, 139

INDUSTRIAL AND PROVIDENT SOCIETIES

- are to be wound up in a County Court, 179

INFANTS. *See* NECESSARIES.

- application of income for the maintenance and education of, 4
- are incapable to enter into contracts, 37, 113
 - except for necessities, 37—39
- contracts by, cannot be ratified after they come of age, 37
- are liable for fraud, 38
- what contracts they may sue on, 39, 40
- may make marriage settlements with the sanction of the Chancery Division, 40
- Infants Relief Act, 1874; 37
- Infants Settlement Act, 40
- may be executors, but cannot act as sole ones, 297, 298, 319
- cannot be appointed administrators, 319

INITIALS,

- will satisfy the Statute of Frauds when intended as a signature, 26

INSURANCE. *See* FIRE ASSURANCE; LIFE ASSURANCE; MARINE ASSURANCE.

INTEREST,

- when payable of bills of exchange, 129, 268, 270
- when originally allowed, 268
 - on mercantile securities, *id.*
 - where promise to pay, express or implied, *id.*
 - on money wrongfully or fraudulently withheld, *id.*
- when given by statute, *id.*, 269
 - may be given by jury on debts due at a certain time, *id.*
 - on the value of goods wrongfully converted or seized, 269
 - a matter of discretion for jury, or Judge of fact, *id.*
 - on calls due from contributory of joint stock company, *id.*
- when compound, can be claimed, 270
- is payable at £4 per cent. on judgment debts or judgment or order of Court, *id.*
 - also on County Court judgments, *id.* n. (*kk*)
- when payable in bankruptcy, *id.*, 271
- when in winding up company, 271
- when payment of, takes debt out of Statute of Limitations, 277—279
- when payable on legacies, 309

INTERNATIONAL AND COLONIAL ARRANGEMENTS, '

for the protection of inventions, designs, and trade-marks, 208, 209

INTERNATIONAL AND COLONIAL COPYRIGHT ACT, 1886. *See* COPYRIGHT.

provisions of, respecting literary and artistic works first published abroad, 222, 223

INTESTACY. *See* DISTRIBUTIONS, STATUTE OF.

in case of, personal property goes to the next-of-kin, 2

administration must be taken out to enable the property to be dealt with, 286—288, 312—325

INVENTOR,

who is the "true and first," in applying for a patent, 182

I O U,

is an acknowledgment of debt only, 141

does not require a stamp, *id.*

unless it contains a promise to pay, *id.*

JOINT DEBTORS. *See* LIMITATIONS, STATUTE OF; MERCANTILE LAW AMENDMENT ACT, 1856.JOINT OWNERSHIP. *See* PARTNERS.

in personal property, 5

of stock in the public funds, 7

JOINT STOCK COMPANIES. *See* COMPANIES CLAUSES CONSOLIDATION ACT, 1845.

originally could only be incorporated by royal charter or by Act of Parliament, 162

when they may be parties to bills of exchange, 114

power of, to issue debentures, 142

mortgages and charges affecting property of, must be registered, 147

shares in, are personal property, 162, 172

are choses in action, and do not come within the "order and disposition clause" in the Bankruptcy Act, 252, 253

Letters Patent Act, 1839; 162

powers conferred by, 162—164

Companies Clauses Consolidation Act, 1845; 164—168

Companies Acts, 1862 to 1886; 168

previous Acts repealed, *id.*, 169

partnerships of more than a certain number of persons prohibited, 169

seven or more persons may form an incorporated company, 170

JOINT STOCK COMPANIES—*continued*.Companies Acts, 1862 to 1886—*continued*.

- what memorandum of association must contain, 170
- liability of members may be limited or unlimited, *id.*, 171
 - may be "limited by shares" or "limited by guarantee," 170
 - of members may be limited, and of directors or managers unlimited, 171
- effect of carrying on business with less than seven members, *id.*
- articles of association, *id.*
- registration effects incorporation, 172
- names of every member must be registered, *id.*
- transfer of shares, *id.*
 - need not be by deed, *id.*
- Leeman's Act, 1867; 172, 173
 - regulates sale of shares and stock in banking companies, 173
- capital may be increased or reduced, *id.*
- name may be altered, *id.*
- regulations as to calls, *id.*, 174
- shares subject to payment of the whole amount thereof in cash, 174
 - exception, *id.*
- notice of alteration of capital must be given to the registrar, 175
- when share warrants may be issued, *id.*
- no notice of trust to be entered on register, *id.*
- certificate is *prima facie* evidence of members' title to shares, *id.*
- what contracts must be stated in prospectus, *id.*
- reason for stating contracts, 176, 177
- winding up, 177—179, 263—265
 - by the Court, 177, 178
 - voluntary, 178
 - under supervision of Court, *id.*
 - of unregistered companies, *id.*
 - by County Court, *id.*, 179
 - of building societies, 179
 - of industrial and provident societies, *id.*
- execution cannot be issued against shareholders or public officer without leave, 230, 231
- winding up, 263
- when company can be wound up, *id.*
 - when unable to pay its debts, *id.*, 264
- who may present petition, 263
 - when contributory may, *id.*
- who are contributories, 264, 265
 - settling lists of, 265
- when married woman liable as, *id.*
- when her husband liable, *id.*
- how far rules of bankruptcy are applicable, 266

JOINT STOCK COMPANIES—*continued*.Companies Acts, 1862 to 1886—*continued*.

what proceedings after commencement of, are void, 266, 267

when interest payable on calls, 269

when on debts in winding up, 271

such debts are in the nature of a specialty, 281

JUDGMENTS. *See* DEBTS; EXECUTION.

enforcement of, 224, 226

priority of, 231, 232

JUDICATURE ACTS, 1873, 1875

rules of equity to prevail, when in conflict with those of law, 6 n. (u)

assignment of choses in action, 100

equitable execution, 228, 229

administration of assets of deceased insolvent, 232

what rules of bankruptcy are to prevail in the winding up of companies, 266

transfer of Court of Probate to High Court of Justice, 288, 289

administration of the estates of deceased persons, assigned to the Chancery Division, 324, 325

JUDICIAL SEPARATION,

effect of, on wife's property, 42, 43

KIN,

right of next of, to administer, 288, 297, 314

KINDRED,

mode of reckoning degrees of, 314—316

property of intestate divided among, according to the Statute of Distributions, 322—324

LANDLORD,

power to distrain in case of bankruptcy, 249

LAW,

rules of, not to prevail against those of equity, 6

assignment of choses in action, not permitted by, 93

apply to bills of exchange, &c., except where modified by the Bills of Exchange Act, 1882; 107

as to interest payable on debts, 268

extinguished a debt due from an executor to his testator, 306

analogy between, and equity with regard to the Statute of Limitations, 273

LARCENY ACT, 1881,

when stolen property reverts to owner, even after sale in market
overt, 9, 10

LECTURES. *See* COPYRIGHT.LEEMAN'S ACT, 172, 173. *See* JOINT STOCK COMPANIES.LEGACIES. *See* CUSTOMS AND INLAND REVENUE ACTS; EXECUTORS AND ADMINISTRATORS.

lapse of, 290

to be paid after debts, 306

to creditor generally presumed to be meant as satisfaction of debt, 305

to debtor not so, unless clear evidence of being so intended, 305, 306

to charity, when valid, 306

may be general or specific, *id.*

specific, definition of, *id.*, 307

ademption of, 307, 308

abatement of, 308

demonstrative, definition of, *id.*

when to be paid, *id.*, 309

when interest is payable on, 309

when personal estate to be converted and invested upon securities, *id.*

to infants or persons abroad to be paid into the Bank of England, *id.*

vested or contingent, *id.*, 310

disposition of residue, 311

limitation of time for bringing actions in respect of, 327

LEGACY DUTY ACTS,

duties payable under, 330—332

LETTERS PATENT. *See* JOINT STOCK COMPANIES.

granting of, to certain companies, 162—164

liabilities of members in, 163

transference of shares in, 164

LETTERS PATENT ACT, 1837. *See* JOINT STOCK COMPANIES.LICENSES. *See* PATENTS.

when patentee may be compelled to grant, 192

LIEN,

of transferee of bills of lading, &c., who has made advances on the
value of goods therein mentioned, 34

nature of, 82, 83

particular and general, 83

rule of Supreme Court as to claim of, 84

of solicitor, *id.*

LIFE ASSURANCE,

- is not a contract of indemnity, 151
- policies of, are now assignable by statute, 150, 152, 153
 - forbidden on marriages, births, christenings and service, 151
 - and on lives wherein assured has no interest, *id.*
 - may be effected by a married woman on her own or her husband's, 153, 154
 - or by husband or wife for benefit of the other and of their children, 154
 - effected by a man on his own life for the benefit of his wife and children, are not voluntary settlements within the Bankruptcy Act, 257
- assurers must be informed of all material facts respecting the insurance, 160
- companies are regulated by the Life Assurance Companies Acts, 1870 to 1872; 170

LIMITATIONS, STATUTE OF,

- payment of debts can only be enforced within prescribed period, 271
- simple contract debts, six years, 271, 272
- specialty debts twenty years, 271, 281
- further period allowed when creditor under certain disabilities, 271—275, 281
 - which must have existed when cause of action arose, 275
- married women no longer under disability, 274
- in actions by or against executors or administrators, 275
- in actions against two or more joint debtors, 276
- effect of fraudulent concealment of cause of action, 277
- debt barred, may be revived by promise to pay or acknowledgment, *id.*
 - such promise or acknowledgment must be in writing, 277, 278
 - may be signed by agent duly authorized, 278
- debt barred may also be revived by part payment of capital or payment of interest, 277, 279, 280
 - appropriation of payments for this purpose, 280
- executor or administrator may retain debt barred by statute, as against a general legatee or one of the next of kin, *id.*
- the Statute cannot be set up unless it is pleaded, 281
 - when it ceases to run, 282
- as to legacies and claims on the personal estate of an intestate, 327

LITHOGRAPHS. *See* COPYRIGHT.

LOANS

- on interest, to be paid out of capital, do not *per se* constitute a partnership, 7
- by married woman to her husband for the purpose of his trade or business, 248, 249

LONDON,

by custom of, a *feme covert* might be a sole trader, 42

LORD CAMPBELL'S ACT. *See* CAMPBELL'S, LORD, ACT.

LORD ST. LEONARD'S ACT. *See* ST. LEONARD'S, LORD, ACT.

LORD TENTERDEN'S ACT. *See* TENTERDEN'S, LORD, ACT.

LUNATICS,

as a general rule cannot enter into a contract, 37, 41
when liable on contracts, 41, 42

MAGNA CHARTA,

provision in, as to disposition of personal property at death, 286

MAINTENANCE,

definition of, 95
assigument partaking of the nature of, not permitted, *id.*

MARINE ASSURANCE,

is a contract of indemnity, 155
policies of, are now assignable by statute, 155, 158, 159
 assured must have interest in, 155, 156
 except in certain cases, 156
what may be insured, 157
"bottomry" and "respondentia," *id.*
policies may be either open or valued, *id.*
 names to be inserted in, 158
assurer must be informed of all material facts respecting the assurance, 160

MARKET OVERT. *See* HORSES; LARCENY ACT, 1881

definition of, 8
sales in, 8, 9, 11, 12
 when avoided by Larceny Act, 1881; 9, 10
sale of horses in, 11, 12

MARRIAGE SETTLEMENTS. *See* ANTICIPATION.

how affected by the Married Women's Property Act, 1882; 45, 48, 49
are still desirable, 49
may be made by infants with the sanction of the Chancery Division,
 40
made before and in consideration of marriage, are good against trustee
 in bankruptcy, 256, 257

MARRIED WOMEN. *See* CONVEYANCING AND LAW OF PROPERTY ACT, 1881; HUSBAND; LIFE ASSURANCE; MARRIED WOMEN'S PROPERTY ACT, 1882; WIFE; WIDOW.

- could not contract at common law, 37, 42
 - except when husband was *civiliter mortuus*, 42
 - or she was a sole trader by the custom of London, *id.*
- effect of decree of "judicial separation" on, 42, 43
- property held to separate use of, 43, 44
- since Married Women's Property Act, may generally hold and deal with property as a *feme sole*, 44, 274, 282
- and are generally liable on their contracts, 45
- liable for ante-nuptial debts, 47, 265, 282
 - effect of settlements on, 45, 48, 284
- may now sue in their own names, 47, 48
- are *prima facie* supposed to be entitled to certain choses in action standing in their names, 97, 98
- indorsement of bills of exchange by, 119
- may effect policies of life assurance for certain purposes, 153, 154
- may commit an act of bankruptcy, 240, 241
- in case of loans to husband for his trade, can only claim dividend after other creditors, 248, 249
- no longer under a disability to sue within the Statute of Limitations, 273, 274
- liable as contributories in the winding-up of joint stock companies, 265
- may dispose of property by will, 44, 291, 292
 - subject to marriage settlements, 291
- "paraphernalia," rights to, 293, 294
- equity to a settlement, 295
- probate to will of, is now general, 297
- may be executrix without her husband's consent, 298
- reversionary interests of, 294

MARRIED WOMEN'S PROPERTY ACT, 1882,

- definition of property in, 2
- enables a married woman generally to hold and dispose of property as if she were a *feme sole*, 44, 274
- does not interfere with settlements, or realization on anticipation, 45, 48
 - unless created by the woman herself, 45, 48
- affects husband's liability for wife's ante-nuptial debts, &c., 47, 265, 282—284
- affects certain choses in action, 97, 98
- gives power to effect policies of life assurance, 153, 154
 - or to make a will, 291, 292
- affects loans from wife to husband, 249
- power of appointment, not separate property within, 251, 252

MAXIMS, PHRASES, &c.

- domitæ nature*, 1
- mobilia sequuntur personam*, 3
- quæ ipso usu consumuntur*, 4
- jus accrescendi inter mercatores locum non habet*, 6
- fructus industriales*, 17
- sub potestate viri*, 42
- vir et uxor sunt quasi unica persona, quia caro una, sanguis unus, id. civiliter mortuus, id.*
- feri facias de bonis ecclesiasticis*, 226
- sequestrari facias de bonis ecclesiasticis, id.*
- solvitur in modum solventis*, 280
- recipitur in modum recipientis, id.*
- cum testamento annexo durante minore ætate*, 298
 - durante absentia, id.*, 320
 - pendente lite, id.*, 319
- actio personalis moritur cum persona*, 303, 304
- ad colligendum bona defuncti*, 318

MEMORANDUM IN WRITING. *See* CONTRACT; FRAUDS, STATUTE OF; PRINCIPAL AND SURETY; SIGNATURE.

- respecting the sale of goods of the value of £10 or upwards, 15, 16
- need not be in one document, 20
- contents of, 22
- may be signed by agents, 24
- signature of, 25
- respecting contracts not to be performed within one year, 27

MEMORANDUM OF ASSOCIATION. *See* JOINT STOCK COMPANIES.

- what it must contain, 170
- liability of members of companies may be limited by, 170, 171

MERCANTILE CUSTOMS. *See* CUSTOM OF TRADE.

MERCANTILE LAW AMENDMENT ACT, 1856,

- provisions as to *bonâ fide* sale of goods before seizure or attachment, 12
- power to order execution to issue for the delivery of goods, 35
- decision under, as to acceptance of bill of exchange, 112
- protects title to goods acquired *bonâ fide* before actual seizure and without notice of *fi. fa.*, 226
- consideration for guaranty need not be in writing, 22 n. (x), 233
- effect of a change in a firm of partners to or for whom a guaranty has been given, 234
- rights of surety on paying debt, 236, 237
- as to Statute of Limitations in case of accounts, 272
 - in case of two or more joint debtors, 276
 - disabilities to sue, 273, 275, 281 n. (h)
 - acknowledgment or promise to pay, 278

MERCHANT SHIPPING ACTS. *See* SHIPS.

MINES,

company engaged in working, subject to the jurisdiction of the
Stannaries, not within the Companies Act, 1862; 169

MONOPOLIES, STATUTE OF,
as to patents, 180, 182

MORTGAGE. *See* BILLS OF SALE.

transfer of goods by, 61

of registered ship or share therein, 89
certificate of, *id.*

affecting property of a limited company, must be registered, 147
also affecting the property of companies incorporated under the
Companies Clauses Consolidation Act, 1845; 148

MORTGAGE DEBENTURE ACT, 1865. *See* DEBENTURES.

MOVABLES. *See* PERSONAL PROPERTY.

what they are, 1

contrasted with real or immovable property, 2

were formerly of little consideration, *id.*

unaffected by rules of feudal law, *id.*

now often of more value than property in land, *id.*

MUSICAL COMPOSITION. *See* COPYRIGHT.

NECESSARIES,

infant is liable on contract, for, 37—39

what are, 39

NEGOTIABLE INSTRUMENTS. *See* ASSIGNMENT; BILLS OF EXCHANGE;
BILLS OF LADING; CHEQUES; DIVIDEND WARRANTS; DOCK
WARRANTS.

NEGOTIATION

of a bill of exchange, what amounts to, 119

NEXT OF KIN. *See* KIN; KINDRED.

NOTICE

of dishonour, 124—126

of assignment of choses in action, 97, 100

in lieu of *distringas*, 98—100, 228

of increase of capital in joint stock companies, 175

OFFICIAL RECEIVER. *See* BANKRUPTCY.

ORDER AND DISPOSITION. *See* BANKRUPTCY.

OWNERSHIP. *See* HORSES; LARCENY ACT; MARKET OVERT.

personal property the subject of absolute, 3
of vendor, generally necessary to validity of sale, 8
except in sales in market overt, 8, 9

PAINTINGS. *See* COPYRIGHT.

PARAPHERNALIA,

wife's right to, 293, 294
definition of, *id.*, *id.*

PARTIES TO BILLS OF EXCHANGE,

definition of, 105, 106
who may be, 113—115
liabilities of, 128, 129

PARTIES TO CONTRACT. *See* BILLS OF EXCHANGE; CONTRACT;
DRUNKARDS; INFANTS; LUNATICS; MARRIED WOMEN.

who may be, 36, 113
who are incompetent, 36, 37, 113
infants, 37
married women (at common law), 42
persons *non compotes mentis*, including drunkards, 41, 42

PARTNERS. *See* BANKRUPTCY; JOINT STOCK COMPANIES; SURVIVORSHIP.

liability of, 6
how qualified by Bovill's Act, 7
proceedings against in bankruptcy, 241, 247, 248

PARTNERSHIPS. *See* JOINT STOCK COMPANIES.

of more than a certain number of persons prohibited, except as joint
stock companies, 169
enforcement of judgments against, 225

PART PAYMENT,

effect of, under Statute of Frauds, 19

PATENTS. *See* DESIGNS; TRADE MARKS.

definition of, 180
right to grant, 180, 181

PATENTS—*continued.*

- are now regulated by the Patents, Designs and Trade Marks Act, 1883; 181
- “patent,” “patentee,” and “invention,” meaning of, 182
- who may apply for, *id.*
- may be granted to two or more jointly, *id.*
- how application for, must be made, *id.*†
- who is “true and first inventor,” 182—184
- what is subject matter of, 184
- how affected by exhibition, 184, 185
- specification, provisional and complete, 185—187, 190
 - amendment of, 188
- comptroller and examiner, 186
- where there are more applications than one in respect of the same invention, 187
- grounds of opposition to, 188
- grant of, 189
 - when it may be refused, 190
- provisional protection, *id.*
- loss or destruction of, *id.*
- extent and duration of, *id.*, 191
- effect on crown and officers of the crown, 191
- user on board a foreign vessel, *id.*, 192
- when patentee may be compelled to grant licences, 192
- revocation of, *id.*, 193
- assignment of, 193, 194
- register, what to be entered on, *id.*, *id.*
- no notice of any trust, 194
- prohibition of threats of legal proceedings, *id.*, 195
- penalty for falsely representing an article to be patented, 195
- arrangements for protection of foreign and colonial, 208, 209

PAWN OR PLEDGE. *See* PAWNBROKERS; FACTORS' ACT.

- goods may be transferred as, 76
- property of pawnee in the goods, 77
- rights and liability of pawnor and pawnee, 77, 78
- is not within the Bills of Sale Act, 64, 78
- is a species of bailment, 80

PAWNBROKERS,

- business of, is now regulated by Pawnbrokers' Act, 1872, 78

PAYEE,

- of bill of exchange, 108, 109

PAYMENT

- of interest or part of capital due, effect of, 277—280
 - by one of two or more joint debtors, 278

PAYMENT—*continued*.

- appropriation of, 280
- of bills of exchange for honour, 132
- of capital of joint stock companies by means of calls, 173, 174
- of legacies, 308, 309, 327

PAYMENT INTO COURT

- by trustees, executors and administrators, 327, 328

PENALTIES. *See* COPYRIGHT; DESIGNS.PERPETUITIES. *See* THELLUSSON ACT.

- personal property can only be tied up for a limited period, 5

PERSONAL PROPERTY. *See* CHOSSES IN ACTION; CHOSSES IN POSSESSION; MOVABLES.

- definition of, 1
- in Wills Act, 2
- contrasted with real or immovable property, *id.*
- heir does not take, *id.*, 285
- is subject to the domicile of owner, 3
- is the subject of absolute ownership, *id.*
- limited interests in, can only be given by means of trustees, *id.*
- there cannot be future interests in articles *quæ ipso usu consumuntur*, 4
- may be owned by several jointly, 5

PERSONAL REPRESENTATIVES. *See* EXECUTORS AND ADMINISTRATORS.

- personal property devolves upon, 2, 3, 285, 303

PHOTOGRAPHS. *See* COPYRIGHT.PICTURES. *See* COPYRIGHT.PIRACY. *See* COPYRIGHT; DESIGNS; PATENTS.

PLEADING,

- the Statute of Frauds must be pleaded, 28
- also the Statute of Limitations, 281, 282

PLEDGE. *See* PAWN.POLICIES OF ASSURANCE. *See* FIRE ASSURANCE; LIFE ASSURANCE; MARINE ASSURANCE.

PORTIONS,

- to children, 305, 323

POWERS,

- must be conferred on trustees, for the purpose of giving limited interest in personal property, 3
- which, of bankrupt can be exercised by his trustee, 251, 252
- of executor or administrator, whence derived, 289
- of appointment, exercised by will, 290

PRESENTMENT. *See* BILLS OF EXCHANGE; PROMISSORY NOTES.

PRINCIPAL AND AGENT,

- agents may sign so as to charge principals under the Statute of Frauds, 24
- when personally liable, 24, 26
 - when not, 25
- effect of agent signing bill of exchange, 116
- agent may sign acknowledgment or promise to bar the Statute of Limitations, 278

PRINCIPAL AND SURETY,

- promise to answer for the payment of a debt by another, must be in writing, 232
- must be made to the person to whom surety is liable, *id.*
- consideration for promise need not be in writing, 233
 - but must be proved if questioned, *id.*
 - what it may be, *id.*
- mere promise to indemnify against liability need not be in writing, *id.*
- principal must continue liable, 234
 - unless surety has contracted to the contrary, *id.*
- effect of a change in a firm of partners, *id.*
- demand on principal not necessary to charge surety, 235
- mere forbearance to sue does not discharge surety, *id.*
- modes of discharging surety, *id.*, 236
 - time being given to principal, 235
 - an alteration in the contract between the principals, *id.*
 - principals dealing together so as to prejudice surety, *id.*
- when debt becomes due, surety may call on principal to discharge it, 236
- surety on paying debt is entitled to the benefit of all the securities which the creditor has, *id.*, 237
 - and to contribution from co-sureties, if any, *id.*
- representation as to solvency of any person, must be in writing, 237, 238

PRIORITY. *See* BANKRUPTCY; CROWN; DEBTS; EXECUTORS AND ADMINISTRATORS.

PROBATE. *See* CUSTOMS AND INLAND REVENUE ACTS; DEVOLUTION OF PROPERTY ON DEATH; EXECUTORS AND ADMINISTRATORS; WILL.

PROBATE, COURT OF,

jurisdiction of, transferred to the High Court of Justice, 289

PROMISE. *See* EXECUTORS AND ADMINISTRATORS; LIMITATIONS, STATUTE OF; SIGNATURE; TENTERDEN'S, LORD, ACT.

to pay a debt barred by the Statute of Limitations, must be in writing, 277, 278

may be made by an agent duly authorised, 278

PROMISSORY NOTES,

Bills of Exchange Act, 1882, applies to, 138, 141

form of, 138

were not transferable at common law, 139

definition of, *id.*

inland or foreign, definition of, *id.*

are incomplete until delivery, *id.*

may be made by two or more makers jointly, or jointly and severally, 140

when payable on demand, must be presented for payment within reasonable time, *id.*

what is reasonable time, *id.*

when presentment necessary, *id.*

where to be presented, *id.*

liability of maker, *id.*, 141

PROPERTY. *See* PERSONAL PROPERTY.

definition of, in Conveyancing Act, 1882, 1

in Married Women's Property Act, 1882, 2

PROSPECTUS,

respecting the formation of joint stock companies, 175—177

object of legislation concerning, 176, 177

PROTEST,

of bills of exchange, 126—128

when necessary, 127

PUBLIC HEALTH ACT, 1875,

contracts under, made by an urban authority whereof the value exceeds £50, must be under seal, 51

PUBLIC POLICY,

assignments or contracts against, cannot be enforced, 53—56, 94

RAILWAY COMPANIES

are empowered to issue debenture stock, 143, 144

RATIFICATION

of signature to bill of exchange, 115
cannot be to a forgery, *id.*

RECEIVER,

appointment of, for purpose of equitable execution, 228, 229

RECEIVING ORDER. *See* BANKRUPTCY.

REGIMENTAL DEBTS

of officers or soldiers, priority of, 231

REGISTER. *See* REGISTRATION.

REGISTRATION

of bills of sale, 65, 66
of British ship, 86—90
of mortgages and charges affecting the property of companies, 147, 148
of memorandum of association, 170
of names of members of joint stock companies, 172
of patents, 193, 194
of designs, 197, 198
of trade-marks, 202—208
 of names and addresses of proprietors of, 207
of cutlery by Cutlers' Company on Sheffield register, 208
of copyright in books, 215, 216
 in paintings, drawings and photographs, 221

RENUNCIATION OF PROBATE. *See* EXECUTORS AND ADMINISTRATORS.

REPRESENTATION. *See* PRINCIPAL AND SURETY ; TENTERDEN'S, LORD, ACT.

as to the character or credit of others, must be in writing, 237, 238

REPUTED OWNERSHIP. *See* BANKRUPTCY.

RESPONDENTIA,

definition of, 157

RETAINER. *See* EXECUTORS AND ADMINISTRATORS.

REVERSIONARY INTERESTS. *See* MARRIED WOMEN.

wife's power of dealing with, 294

REVOCATION

of banker's authority to pay cheques, 136
of patents, 192, 193

SAVINGS BANK,

priority of debts due to, by its officers, 231

SCRIP. *See* FOREIGN BONDS.

SCULPTURE. *See* COPYRIGHT.

SEAL,

consideration is presumed in a contract under, 13, 116

corporation formerly could only contract under, 49, 113

contracts under Public Health Act, 1875, exceeding £50 in value,
must be under, 51, 52

certificate under, is *prima facie* evidence of membership in joint stock
companies, 175

SEAS. *See* LIMITATIONS, STATUTE OF.

absence of debtor beyond, 271, 272, 275

of creditor, 273, 281, n. (*h*)

SECURED CREDITORS. *See* BANKRUPTCY.

SEQUESTRATION

against a beneficed clerk, 226, 227

writ of, against a person disobeying order of Court, 229

SET OFF,

how right of, affects assignee of choses in action, 96, 159

in bankruptcy, 247

SETTLEMENT. *See* BANKRUPTCY; ELIZABETH, STATUTE OF; MARRIAGE
SETTLEMENTS.

how effected, 3

voluntary, when void in bankruptcy, 255—259

when under Statute of Elizabeth, 257—259

wife's equity to, 295

her children cannot insist on, after her death, *id.*

SHARES. *See* JOINT STOCK COMPANIES.

SHEFFIELD REGISTER. *See* TRADE MARKS.

of trade-marks on cutlery, 208

SHERIFF. *See* EXECUTION; FIERI FACIAS; VENDITIONI EXPOSAS.

on execution for a sum exceeding £20, must sell by public auction,
226

protection of title to goods, acquired before seizure and without notice
of delivery of writ to, *id.*

and must retain the net proceeds for fourteen days, 250

gives a good title to purchaser of goods, *id.*, 251

SHIPS,

- provisions of Merchant Shipping Acts respecting, 85, 86
- definition of "British ship," *id.*
 - must belong to natural-born British subjects, 85
 - or persons made denizens, 86
 - or bodies corporate established in the United Kingdom, *id.*
 - alien cannot be owner of, *id.*
 - must be registered, *id.*
 - property in, to be divided into sixty-four shares, 87
 - there may be joint owners of, *id.*
 - declaration to be made by registered owner, *id.*
 - trusts not to be entered in register, *id.*
 - but equities may be enforced against owners and mortgagees, 88
 - transfer of, *id.*
 - transmission of shares in, *id.*
 - mortgage of, 89
 - when certificate of mortgage or sale may be obtained, *id.*
 - when re-registration is necessary, *id.*
 - transfer of registry, 90
- charter party, description of, *id.*
- "general ship," definition of, *id.*
- bill of lading, *id.*
- registered mortgage of, not affected by act of bankruptcy, 255
- use of patent on board foreign, 191

SIGNATURE,

- to memorandum in writing within the Statute of Frauds, 25
 - of both parties not necessary, *id.*
 - initials will suffice, 26
 - may be contained in a telegram, *id.*
 - may be by agent lawfully authorized, 24—27, 116, 278
- to bill of exchange, 111, 112, 115
- to a guaranty, 232
- to representations of solvency, or promises to pay, or acknowledgment of debt, within Lord Tenterden's Act, 237, 238, 277, 278

SIMPLE CONTRACT DEBT. *See* LIMITATIONS, STATUTE OF.
 when action on, must be commenced, 271, 281

SOLICITOR'S LIEN. *See* LIEN.

SOLVENCY. *See* PRINCIPAL AND SURETY; REPRESENTATION; TENTERDEN'S, LORD, ACT.
 representations as to, or character or credit of others must be in writing, 237, 238

SPECIALTY. *See* LIMITATIONS, STATUTE OF.

when action on, must be commenced, 271, 281

payment of, 231, 232, 305

SPECIFICATION. *See* PATENTS.

SPECIFIC LEGACIES,

definition of, 306, 307

ademption of, 307, 308

abatement of, 308

STAMP,

when fresh required, by alteration in bill of exchange, 130

not required for an I. O. U., 141

or for debentures, 142

ST. LEONARDS', LORD, ACT,

provision in, relieving trustees against default of co-trustees, 299, 300

STANNARIES. *See* MINES.

STATUTE OF DISTRIBUTIONS. *See* DISTRIBUTIONS, STATUTE OF.

STATUTE OF ELIZABETH. *See* ELIZABETH, STATUTE OF.

STATUTE OF FRAUDS. *See* FRAUDS, STATUTE OF.

STATUTE OF LIMITATIONS. *See* LIMITATIONS, STATUTE OF.

STATUTE OF MONOPOLIES. *See* MONOPOLIES, STATUTE OF.

STOCK. *See* DEBENTURES; FUNDS.

can only be settled by the intervention of trustees, 3

in joint stock companies, 165—168

STOLEN GOODS. *See* LARCENY ACT; MARKET OVERT.

sale of, 8—12

STOP ORDER,

when person interested in fund may obtain, 100, 228

STOPPAGE *IN TRANSITU*,

when it arises, 31, 32

how defeated, 33, 34

SUCCESSION DUTY ACT,

duties payable under, 331—335

SUNDAY,

- what sales or contracts on, are illegal, 59, 60
- when bills of exchange fall due on, 111

SURVIVORSHIP,

- See* CONVEYANCING AND LAW OF PROPERTY ACT, 1881 ; FUNDS.
- benefit of, may exist with respect to personal property, 5
 - exception in case of partnership, 6
- in case of the public funds, 7
- of executors, 300, 319
- of administrators, 319

TELEGRAM,

- signature within the Statute of Frauds may be contained in, 26

TENANT'S FIXTURES

- are personal property, 1

TENTERDEN'S, LORD, ACT,

- extends Statute of Frauds to goods not in existence at time of contract, 15, 27
- applies to contracts for the sale of fixtures and emblements, 16
 - to representations respecting the character and credit of others, 237, 238
- to promises to pay or acknowledgments of debt to bar the Statute of Limitations, 277, 278
- to payments of interest on part-payment of capital to bar same statute, 279, 280

THELLUSSON ACT

- prescribes periods during which income may be accumulated, 5

TIPPLING ACTS,

- sale of spirituous liquor, when illegal under, 58, 59
- provisions of County Courts Act, 1867, as to sale of ale, porter, beer, cider, or perry, 59

TITLE. *See* STOLEN GOODS.

- of ownership generally necessary to validity of sale of choses in possession, 8
 - exception in case of sale in market overt, *id.*
- documents of, 33
 - bills of lading, *id.*
 - indorsement of, defeats right of stoppage *in transitu*, 33, 34
 - dock warrants, 34

TRADE MARKS,

- originally no property in, 201
- but persons might be restrained in equity from using them fraudulently, *id.*
- statutes for protection and registration of, 201, 202
- what they must contain, 202
- registration of, 202—208
 - application for, 202, 203
 - must be advertised, 203
 - may be opposed, 203, 204
 - when claimed by two or more persons, 204
 - identical or nearly resembling trade marks must not be registered, *id.*
 - criterion whether resemblance is such as to deceive, 204, 205
 - several may be registered in a series by one proprietor, 205
 - may be registered in any colour, *id.*
 - what may be entered on register in addition to, 206
 - no damages for infringement can be recovered before, *id.*
 - fresh fee must be paid every fourteen years, *id.*
 - may be added to or altered with leave of Court, 207
 - may only be assigned in connection with good-will of business, *id.*
 - register, what must entered on, 207, 208
 - no notice of any trust, 207
 - may be rectified by order of Court, 208
 - provision for the registration of the Cutlers' Company in the "Sheffield Register" of trade marks on cutlery, &c., *id.*
- arrangement for the protection of foreign and colonial, 208, 209

TRANSFER. *See* ASSIGNMENT; BARGAIN AND SALE; BILLS OF EXCHANGE; BILL OF SALE; CHUSES IN ACTION; CHUSES IN POSSESSION; COMPANIES CLAUSES CONSOLIDATION ACT, 1845; CONTRACT; FRAUDS, STATUTE OF; JOINT STOCK COMPANIES; MARKET OVERT.

- of goods, 8
 - by delivery, *id.*
 - by contract, 13
 - time of, 31, 32
 - by indorsement of bills of lading, 33, 34
 - of dock warrants, 34
 - by way of mortgage, 61
 - by way of pawn or pledge, 76
 - by bailment, 79
- of ships, 88

TREES,

- cut or blown down, are personal property, 1
- when contracts for the sale of, are within the Statute of Frauds, 17, 19

TRUSTEE IN BANKRUPTCY. *See* BANKRUPTCY.

TRUSTEES,

- necessary to give limited or successive interests in personal property, 3
- may apply income for education or benefit of infants, 4
- are in law owners of the property transferred to them, *id.*
- but accountable for it in equity to their *cestuis que trust*, *id.*
- appointment of others in case of bankruptcy of, 262
- relief granted to, in Lord St. Leonards' Act, 299
- payment into Court by, 327, 328

TRUSTS,

- not noticed in register of British ships, 87
- or of joint stock companies, 175
- or of patents, 194
- or of designs, 199
- or of trade marks, 207

UNREGISTERED COMPANIES,

- winding up of, 179

VENDITIONI EXPONAS,

- when writ of, may be sued out, 226

VENDOR AND PURCHASER. *See* BARGAIN AND SALE; STOPPAGE IN TRANSITU.

- effect of bargain and sale, 13, 14, 31
- rights of unpaid vendor, 31
- when vendor fails to deliver, 35
- when buyer may reject goods, 35, 36

VOLUNTARY SETTLEMENTS. *See* BANKRUPTCY; FRAUDULENT CONVEYANCE; SETTLEMENTS.

WAGER. *See* GAMING.

WARRANTY,

- when it exists, 35
- difference between, and a condition, 35, 36

WIDOW,

- when entitled to administration, 288, 314
- share of, under Statute of Distributions, 322, 323

- WIFE. *See* EQUITY TO SETTLEMENT; HUSBAND; MARRIED WOMEN.
 equity of, to a settlement, 295
 cannot be insisted on by her children after her death, *id.*
- WILL. *See* DEATH; DEVOLUTION OF PROPERTY ON DEATH; EXECUTORS
 AND ADMINISTRATORS; LEGACIES.
 of personalty, history of, 285
 all personal property may be disposed of by, 289
 formalities requisite in, 290
 speaks from the death of testator, *id.*
 is revocable in his lifetime, *id.*
 may be made by married women, 44, 291, 292
 probate of, 296—298
 in county court, 297
 in common form, 296
 in solemn form, *id.*
 where no executor administrator may be appointed with will annexed,
 297
- WINDING-UP OF COMPANIES, 177—179, 263—267. *See* JOINT STOCK
 COMPANIES.
- WRIT. *See* DEBTS; DELIVERY; EXECUTION; FIERI FACIAS; SEQUESTRA-
 TION; VENDITIONI EXPONAS.
- YEAR,
 contracts not to be performed within, must be in writing, 27, 28
 executor has space of, to pay legacies in, 308, 309

THE END.

BY THE SAME AUTHOR.

THE MODERN LAW
OF
REAL PROPERTY

WITH AN INTRODUCTION FOR STUDENTS,

And an Appendix

CONTAINING

THE LIMITATION ACT, 1874; THE VENDOR AND PURCHASER ACT, 1874;
THE LAND TRANSFER ACT, 1875; THE SETTLED ESTATES ACT, 1877;
THE CONVEYANCING ACTS, 1881, 1882; THE SETTLED LAND ACTS, 1882, 1884;
THE MARRIED WOMEN'S PROPERTY ACTS, 1882, 1884;

AND

THE RULES OF THE SUPREME COURT.

SECOND EDITION.

BY

LOUIS ARTHUR GOODEVE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

1885. Price 21s. cloth.

"The work is carefully written, and will be found of use by the legal practitioner as well as by the student."—*Athenæum*.

"The extreme ability, care, and efficiency which Mr. Goodeve has displayed throughout the pages of his concise though comprehensive—and, where necessary, even elaborate work, are destined, we venture to predict, to ensure for it the heartiest approbation, both of the practitioner and the student."—*Pump Court*.

"The object of the Author has been gradually to lay before his reader a comprehensive view of the Modern Law of Real Property. In carrying this out he has been careful to avoid dwelling on the past more than is necessary to an understanding of the present state of the law, while he has very clearly and carefully pointed out the important changes effected by recent legislation. Although designed for students, we think a perusal of the book will amply repay many practitioners."—*Law Journal*.

"The various branches of the subject are handled thoroughly and clearly, and, where necessary, are illustrated by examples. It will well repay perusal by any one interested in the Law of Real Property."—*Law Times*.

"Mr. Goodeve has taken up the subject and written on it from a modern standpoint, thus furnishing the beginner with an admirably clear and intelligible treatise. . . . It is the best treatise on Real Property extant."—*Oxford and Cambridge Undergraduates' Journal*.

"We are favourably impressed with the work, for there is a clear appreciation of what is wanted as a foundation, and the subject is pursued in most respects with force and vigour. . . . Our general view of it is undoubtedly favourable, and we can see a successful future for it."—*Law Students' Journal*.

"We cordially recommend the book to the attention of the student. Indeed we consider it a book which might with advantage be introduced to the notice of those who are pursuing their studies at the University, for in no other recent work will they discover the valuable information that has been collected by the Author."—*Australian Law Times*.

QUESTIONS TO ABOVE, 2s. 6d.

C C

BY THE SAME AUTHOR.

AN EXPOSITION

OF

THE NEW

LAW OF BANKRUPTCY.

(FOR THE USE OF LAWYERS, STUDENTS, AND
THE COMMERCIAL CLASSES.)

BY

LOUIS ARTHUR GOODEVE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

Price 3s. 6d.

“The student, and also any who wish to get a general knowledge of the Law of Bankruptcy, could not do better than read the work from beginning to end.”—*Pump Court*.

“This is a short and clear exposition of the Bankruptcy law, which will be found a useful introduction to the study of the Act and Rules, or a useful means of obtaining a general idea of the law.”—*Law Journal*.

“This is a very clear and useful explanation or statement of the new Bankruptcy Act.”—*Law Students' Journal*.

“Mr. Goodeve's work is calculated, we think, to be exceedingly serviceable, not only to the legal profession and those engaged in the administration of the Bankruptcy Laws, but to the large body of merchants and traders for whose protection those laws have been framed.”—*Bristol Mercury and Daily Post*.

BY THE SAME AUTHOR.

RAILWAY PASSENGERS AND RAILWAY COMPANIES: THEIR DUTIES, RIGHTS, AND LIABILITIES. By L. A. GOODEVE, Barrister-at-Law. New Edition. Price 5s. cloth.

"Mr. Goodeve has rendered a service to the public in making a digest of the law relating to railway passengers, including the respective duties, rights, and liabilities of the Companies on the one hand and passengers on the other, as laid down by the statutes and the decisions of the Superior Courts. The various points are treated in a clear, yet concise, manner; and it is to be hoped that this little work will be widely studied, so that people may know what are their rights, and take steps to maintain them."—*Saturday Review*.

"The Author has managed to pack into a very small space much useful information on a somewhat extensive branch of law."—*Athenæum*.

"Mr. Goodeve's little book is a concise epitome of the Acts, Byelaws, and Cases relating to passengers and their personal luggage. It is clearly written, and the reader is able speedily enough to find any point upon which he desires to inform himself."—*Law Journal*.

"The treatise is of permanent value, not only to the practitioner and the law student, but to men of business, and to what may be called the travelling public. It is luminous, comprehensive, accurate and interesting."—*Illustrated London News*.

"Travellers on the railway will do well, if possible, to avoid litigation, but at the same time they should certainly assert their legal rights. Much trouble will be avoided, if they are accurately acquainted with what their position actually is, and they will be greatly assisted in the attainment of this knowledge by a perusal of 'Railway Passengers and Railway Companies,' by Mr. L. A. Goodeve."—*Tourist and Traveller Review*.

THE LAW OF EVIDENCE AS ADMINISTERED IN ENGLAND AND APPLIED TO INDIA. New Edition by L. A. GOODEVE, Barrister-at-Law. With Supplement containing the Indian Evidence Act, 1872, and other Acts relating to the Law of Evidence in India. 21s.

"Recommended by the Civil Service Commissioners to be carefully read by selected candidates for the Indian Civil Service."—*General Instructions for Examinations*.

* * * *THE SUPPLEMENT can be had separately. 3s.*

LORD MANSFIELD, C.J.: A FOUNDER'S DAY SPEECH. By L. A. GOODEVE, B.A., Junior Student of Christ Church, Oxford, and of the Middle Temple, Barrister-at-Law. 1865. 1s.

"In Mr. Goodeve's speech we have a concise estimate of Lord Mansfield's political as well as of his judicial character, written in a singularly agreeable style. The whole of Mr. Goodeve's oration is conceived in good taste, and is free from the exaggerated phraseology often found in similar productions."—*Solicitors' Journal*.

LONDON:

W. MAXWELL & SON, 8, BELL YARD, TEMPLE BAR.

Chitty's Index to all the Reported Cases

Decided in the several Courts of Equity in England, the Privy Council, and the House of Lords, with a selection of Irish Cases, on or relating to the Principles, Pleading, and Practice of Equity and Bankruptcy, from the Earliest Period. Fourth Edition, wholly Revised, Re-classified, and brought down to the end of 1883. Vol. IV., containing the Titles "INSURANCE" to end of letter "O." By HENRY EDWARD HIRST, Esq., Barrister-at-Law, Royal 8vo. Price 2l. 2s. cloth.

*** Vols. I., II., and III., price each 1l. 11s. 6d. Vol. V., containing "Practice and Pleading," is in the Press.*

MacSwinney on Mines, Quarries, and Minerals.

The Law of Mines, Quarries, and Minerals. By ROBERT FORSTER MACSWINNEY, M.A., Barrister-at-Law. Royal 8vo. Price 35s. cloth. 1884.

Coote on the Law of Mortgage.

A Treatise on the Law of Mortgage. Fifth Edition. By W. WYLLYS MACKESON, Esq., of the Inner Temple, one of Her Majesty's Counsel, and H. A. SMITH, Esq., Barrister-at-Law. 2 vols. Royal 8vo. Price 3l. cloth. 1884.

Broom's Legal Maxims.

A Selection of Legal Maxims, Classified and Illustrated. Sixth Edition. By HERBERT FRANCIS MANISTY, of the Inner Temple, Esq., Barrister-at-Law. 8vo. Price 1l. 11s. 6d. cloth. 1884.

Goodeve's Modern Law of Real Property. Second Edition.

The Modern Law of Real Property, with an Introduction for the use of Students, and an Appendix containing the Limitation Act, 1874; The Vendor and Purchaser Act, 1874; The Land Transfer Act, 1875; The Settled Estates Act, 1877; The Conveyancing Acts, 1881, 1882; The Settled Land Act, 1882 and 1884; The Married Women's Property Act, 1882 and 1884; and the Rules of the Supreme Court. By L. A. GOODEVE, of the Middle Temple, Barrister-at-Law. Royal 8vo. Price 1l. 1s. cloth. 1885.

*** QUESTIONS ON THE ABOVE. Price 2s. 6d.*

Tudor's Leading Cases on Mercantile and Maritime Law.

A Selection of Leading Cases on Mercantile and Maritime Law, with Notes. By OWEN DAVIES TUDOR, Esq., Barrister-at-Law. Third Edition. Royal 8vo. Price 2l. 2s. cloth. 1884.

Fowler on Colliers and Collieries.

A Handbook of the Law relating to Colliers and Collieries. By JOHN COKE FOWLER, Esq., Barrister-at-Law, Stipendiary Magistrate for Swansea, and Deputy-Chairman of the Glamorganshire Quarter Sessions. Fourth Edition. Demy 16mo. Price 7s. 6d. cloth. 1884.

Rouse's Practical Man.

ROUSE'S PRACTICAL MAN: giving nearly 400 carefully prepared Forms in Legal Matters requiring prompt attention, and a complete collection of Tables and Rules applicable to the Management of Estates and Property, and to the Calculations of all Values dependent on Lives, Reversions, Terminable Payments, &c., also an inexpensive mode of rendering Heath Land a most valuable part of an Estate. By ROLLA ROUSE, Esq., of the Middle Temple, Barrister-at-Law. Sixteenth Edition. In 1 Vol. Price 10s. 6d. cloth. 1884.

Rawlinson's Municipal Corporations Act.

The Municipal Corporations Act, 1882, and the General Rules made in pursuance thereof, and the Acts since passed for amending the same, and otherwise in relation to Municipal Corporations; with Notes and References to the Cases thereon; and an Appendix, containing the principal Statutes referred to, including those relating to Mandamus, Quo Warranto, and also Registration and Corrupt Practices at Parliamentary Elections. By THOMAS GEARY, of the Middle Temple, Barrister-at-Law. Eighth Edition. With SUPPLEMENT containing the Municipal Elections (Corrupt and Illegal Practices) Act, 1884. 8vo. Price 1l. 18s. cloth. 1884.

